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Dated: October 22, 2010.

**Harry S. Hertz,**

Director, Baldrige Performance Excellence Program.

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BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**Action Affecting Export Privileges; Orion Air, S.L. and Syrian Pearl Airlines: Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eisenhower 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 CFR Parts 730-774 (2010) ("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.<sup>1</sup> Thereafter, on November 2, 2009, Acting Assistant Secretary Delli-Colli issued an Order

renewing the TDO for an additional 180 days.<sup>2</sup>

On April 29, 2010, I renewed the TDO against the Respondents for an additional 180 days. That renewal was effective upon issuance and was published in the **Federal Register** on May 7, 2010.<sup>3</sup> The current Order would expire on October 26, 2010, unless renewed in accordance with Section 766.24 of the Regulations.

On October 5, 2010, 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 CFR 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.*

##### 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.

Based on my review of the record, I find that the facts and circumstances 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. Absent renewal of the TDO, there remains a substantial continued risk that the second aircraft will be re-exported contrary to the Regulations, given that, *inter alia*, Orion Air acted with actual knowledge and took deceptive and evasive action. This finding alone would justify renewal. Additionally, there remains a substantial risk that, absent renewal of the TDO, the first aircraft, which remains in Syria, would be operated or disposed of in violation of the Regulations. Furthermore, renewal of the TDO is needed to give notice to persons and companies in the United

<sup>2</sup> The November 2, 2009 renewal Order was effective immediately and was published in the **Federal Register** on November 9, 2009 (74 FR 57,626).

<sup>3</sup> 75 FR 25,202.

<sup>1</sup> 74 FR 24,786.

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, Eisenhower 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.

Issued this 22nd day of October 2010.

**David W. Mills,**

*Assistant Secretary of Commerce for Export Enforcement.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-851]

#### **Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews**

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

**DATES:** *Effective Date:* October 29, 2010.

**SUMMARY:** The Department of Commerce (the Department) is currently conducting two new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC)<sup>1</sup> covering the period of review (POR) February 1, 2009, through January 31, 2010. We preliminarily determine that the sales made by Shandong Fengyu Edible Fungus Co., Ltd. (Fengyu) and by Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa), were not made below normal value (NV). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of merchandise exported by Fengyu and Tongfa during the POR without regard to antidumping duties.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2924, (202) 482-4947 or (202) 482-0649, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 26, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(c), the Department received NSR requests from Fengyu and Tongfa. The Department determined

<sup>1</sup> See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999), (the "Order").