

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

Empresa de Transporte Aéreo cargo del Sur, S.A.
a/k/a Aerocargo del Sur Transportation Company
a/k/a EMTRASUR
Avenida Intercomunal, Edificio Sede, Sector 6.3, Maiquetia
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ORDER RENEWING TEMPORARY DENIAL OF 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 I hereby grant the request of the Bureau of Industry and Security (“BIS”), U.S. Department of Commerce, through its Office of Export Enforcement (“OEE”), to renew the temporary denial order (“TDO”) issued in this matter on January 26, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

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as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.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).

I. Procedural History

On August 2, 2022, I signed an order denying the export privileges of Venezuela-based cargo airline Empresa de Transporte Aéreo cargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR (“EMTRASUR”) for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with Section 766.24(d) of the Regulations.³ The renewal order issued on January 26, 2023 and was effective upon issuance.⁴

On July 3, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on January 26, 2023. The written request was made more than 20 days before the TDO’s scheduled expiration. A copy of the renewal request was sent to EMTRASUR in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. 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

² The TDO was published in the *Federal Register* on August 5, 2022. *See* 87 Fed. Reg. 47964 (August 5, 2022).

³ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

⁴ The January 26, 2023 renewal order was published in the *Federal Register* on January 31, 2023. *See* 88 Fed. Reg. 6231 (January 31, 2023).

“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.*

B. The TDO and BIS’s Request for Renewal

OEE’s request for renewal is based upon the facts underlying the issuance of the initial TDO and evidence developed during this investigation, which demonstrate continued disregard for U.S. export controls and the terms of a preexisting TDO. As noted in OEE’s initial request for a temporary denial order, EMTRASUR is a subsidiary of Consorcio Venezolano de Industrias Aeronauticas Y Servicios Aereos, S.A., a/k/a 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.) 13884.⁵

The initial TDO, issued on August 2, 2022, was based on evidence that EMTRASUR engaged in conduct prohibited by a TDO that had been previously issued against Iranian airline

⁵ See <https://home.treasury.gov/news/press-releases/sm903>

Mahan Air a/k/a Mahan Airlines a/k/a Mahan Airways (“Mahan Air”) and the Regulations when EMTRASUR, through its parent company, acquired 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 2021.⁶

Moreover, the initial TDO, issued on August 2, 2022, was also based on evidence that EMTRASUR had continued to use MSN 23413 on flights into Iran and Russia in violation 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.⁷ *See* General Prohibition 10 of the EAR at 15 C.F.R. § 736.2(b)(10). There are no license exceptions available for this General Prohibition.⁸ As also noted in OEE’s initial request, MSN 23413 was detained by Argentinian authorities on or about June 8, 2022, where it presently remains. On or about August 2, 2022, the United States Department of Justice transmitted a request to Argentinian authorities for the seizure of MSN 23413 following the unsealing of a seizure warrant in the U.S. District Court for the District of Columbia.

⁶ Mahan Air’s status as a denied person was most recently renewed by BIS through a TDO issued on May 5, 2023. *See* 88 Fed. Reg. 30078 (May 10, 2023). The May 5, 2023 renewal order summarizes the initial TDO issued against Mahan in March 2008 and the other renewal orders issued prior to May 5, 2023. *See id.*

⁷ Publicly available flight tracking information demonstrates, for instance, that EMTRASUR operated MSN 23413 on multiple flights between Caracas, Venezuela and Tehran, Iran between February 19, 2022 and May 25, 2022. In addition, EMTRASUR operated MSN 23413 on flights between Tehran, Iran and Moscow, Russia on May 24, 2022 and May 25, 2022.

⁸ 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.

In its request for renewal of the August 2, 2022 TDO, as well as the most recent request submitted on July 3, 2023, BIS offered evidence demonstrating that EMTRASUR's acquisition of MSN 23413 from Mahan Air was in violation of the TDO previously issued against Mahan Air and the Regulations. Specifically, BIS's ongoing investigation has uncovered evidence that certain of MSN 23413's parts, including spare parts which appear to be U.S.-origin, bear the markings and logos of Mahan and/or CONVIASA. This evidence further demonstrates that EMTRASUR's acquisition and operation of the aircraft violated the TDO issued against Mahan Air; as a result, any attempts by EMTRASUR to operate the aircraft or to return it to Venezuela, as well as any efforts EMTRASUR may take to maintain it, would violate General Prohibition 10.

Moreover, as detailed in the January 26, 2023 renewal order, BIS's investigation indicates that Venezuelan parties took affirmative actions to secure the release of the aircraft from its detention in Argentina, even after the issuance of the August 2, 2022, TDO against EMTRASUR. In its most recent request for renewal, BIS has offered evidence that on May 3, 2023, United States District Judge Randolph D. Moss of the United States District Court for the District of Columbia issued a final order of forfeiture as to the aircraft, vesting all rights to MSN 23413 with the United States. *See United States v. Boeing 747-300 Aircraft*, No. 1:22-cv-3208, Dkt. 11 (D.D.C. May 3, 2023). Notwithstanding this order, however, the aircraft remains in Argentina and has not yet been recovered by the United States government.

Based upon the violations by EMTRASUR, its disregard for the Regulations and the previously-issued TDO against Mahan Air, and the potential release of the MSN 23413 from detention, there are concerns of future violations of the EAR. These concerns are heightened because any subsequent actions taken with regard to MSN 23413 may violate the EAR,

including, but not limited to, its refueling, maintenance, repair, or the provision of spare parts or services.

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 EMTRASUR has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal 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.

IV. Order

IT IS THEREFORE ORDERED:

FIRST, Empresa de Transporte Aéreo cargo 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.

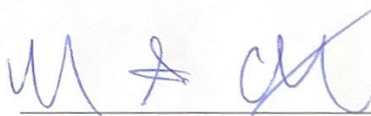
THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to EMTRASUR by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may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

A handwritten signature in blue ink, appearing to read 'M S Axelrod', is written over a horizontal line.

Matthew S. Axelrod
Assistant Secretary of Commerce
for Export Enforcement

Dated: July 25, 2023