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

Balli Group PLC 5 Stanhope Gate London, UK W1K 1AH	)
Balli Aviation 5 Stanhope Gate London, UK W1K 1AH	)

ORDER REVOKING SUSPENSION OF THE $2 MILLION SUSPENDED PORTION OF THE $15 MILLION CIVIL PENALTY SET FORTH IN THE FEBRUARY 5, 2010 FINAL ORDER, AND ALSO CONFIRMING APPLICATION OF THE ACCELERATION CLAUSE REGARDING THE TWO REMAINING INSTALLMENT PAYMENTS

On February 5, 2010, the then-Acting Deputy Assistant Secretary of Commerce for Export Enforcement issued a Final Order approving the terms of the Settlement Agreement entered into on February 4, 2010, between the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), the Treasury Department's Office of Foreign Assets Control ("OFAC"), and Balli Aviation Ltd. and Balli Group PCL (collectively "Balli"), in which Balli agreed, inter alia, to pay a civil penalty totaling $15,000,000, part of which was suspended as discussed below. The Settlement Agreement covered violations of the Export Administration Regulations ("EAR" or "Regulations")[1] alleged by BIS, as well as violations of the Iranian Transaction

[1] The Regulations, currently codified at 15 C.F.R. Parts 730-774 (2011), originally issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (hereinafter "EAA" or "Act"). Since August 21, 2001, the Act has been in lapse, and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010 (75 Fed. Reg. 50681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et al.*) ("IEEPA").

Regulations ("ITR")[2] alleged by OFAC. The Final Order signified BIS's approval of the Settlement Agreement based on the violations alleged by BIS and constituted final agency action by the Commerce Department.

BIS alleged that Balli had violated Section 764.2(d) (Conspiracy) of the Regulations by acting in concert with an Iranian airline and others to export or reexport, or attempt to export or reexport, certain U.S.-origin aircraft to Iran for the use of the Iranian airline without the required U.S. Government authorization, including three Boeing 747's bearing Manufacturer Serial Numbers ("MSN's") 24363, 24383, and 26879, respectively, and valued in total at approximately $141,861,000. In doing so, Balli knowingly disregarded warnings from the U.S. manufacturer of the aircraft and the U.S. Government that the planes were being operated contrary to U.S. export control laws. The aircraft were flying on routes in and out of Iran using Iranian flight numbers while under the operational control of the Iranian airline. Notwithstanding these warnings, Balli conspired with the Iranian airline to enable the airline to continue using the aircraft, and took additional acts in furtherance of this conspiracy, including misrepresenting and concealing information from the U.S. Government regarding the role the Iranian airline played in the acquisition and the financing of the aircraft via funds from the Iranian Foreign Exchange Reserve Fund. These acts were taken to avoid U.S. licensing requirements and to prevent detection by law enforcement, and continued after BIS issued on March 17, 2008, and subsequently renewed, an order temporarily denying Balli Aviation's and Balli Group's export privileges (the "TDO").

In addition to the three aircraft described above, Balli acted in concert with the Iranian airline and others to bring about the unauthorized export or reexport, or attempted export of reexport, to Iran of three additional Boeing 747's, bearing MSN's 25395, 26474, and 26881, respectively, and valued in total at approximately $135,225,000.

[2] 31 C.F.R. Part 560.

BIS also alleged that Balli had violated Section 764.2(k) of the Regulations (Acting Contrary to the Terms of a Denial Order), by taking actions prohibited by the TDO. Balli carried on negotiations with persons, including another person subject to the TDO, concerning financing, receiving and/or using the three additional Boeing 747's (bearing MSN's 25395, 26474, and 26881, respectively), which had been exported from the United States and are subject to the Regulations.[3]

The Settlement Agreement and the Order provide that of the $15 million civil penalty, "$13,000,000 shall be paid in five installments as follows: $2,600,000 no later than March 1, 2010; $2,600,000 no later than September 1, 2010; $2,600,000 no later than March 1, 2011; $2,600,000 no later than September 1, 2011; and $2,600,000 no later than March 1, 2012." The ability to pay the $13 million in installments rather than one lump sum was sought by Balli during the settlement negotiations. However, both the Settlement Agreement and the Order provide that "[i]f any of the five installment payments is not fully and timely made, any remaining scheduled installment payments and the remaining $2,000,000 shall become due and owing immediately."

The payment of the remaining $2 million would be suspended from the date of the February 5, 2010 Order until the last installment payment was made on or before March 1, 2012, and would thereafter be waived, provided, inter alia, "that during the period of suspension . . . [Balli] made full and timely payment of the civil penalty according to the payment schedule set forth above."

Balli thus was obligated under the terms of the Settlement Agreement and the Order to make a $2.6 million civil penalty payment no later than March 1, 2011. It is undisputed that Balli failed to do so and that Balli did not make the payment until March 10, 2011.

On March 24, 2011, BIS's Office of Export Enforcement ("OEE") submitted an application in accordance with Sections 766.17(c) and 766.18(c) of the Regulations, requesting that I revoke the suspension regarding the $2 million suspended portion of the civil penalty in

[3] The items were classified under Export Control Classification Number ("ECCN") 9A991.b, and controlled for anti-terrorism reasons.

this matter. OEE is seeking revocation of the suspension based on Balli's failure to make timely payment of the March 1, 2011 installment payment as required under the terms of the Settlement Agreement and Order. A copy of OEE's application was sent to the Respondents pursuant to Sections 766.17(c) and 766.3 of the Regulations.[4]

OEE also requested that I confirm application of the acceleration-type clause or provision in the Settlement Agreement and) Order, providing that the remaining installment payments (September 1, 2011, and March 1, 2012) totaling $5.2 million became due and owing immediately upon Balli's failure to make the March 1, 2011 installment payment on time. The procedural provisions of Section 766.17(c) apply only to the suspension revocation request, and not to OEE's request that I confirm application of the acceleration provision.

On April 5, 2011, Balli submitted a letter via its U.S. counsel requesting that I deny OEE's application. Under Section 766.17(c) of the Regulations, it is solely in my discretion whether to consider this letter from Balli before determining whether the revoke the suspension. On April 6, 2011 and April 18, 2011, respectively, I requested via counsel that Balli produce documents relating to its request. Balli provided documents that included certain invoices, bank statements and emails, and focused primarily on four of its customers (three in Egypt and one in the United Arab Emirates ("UAE")) whose payment Balli asserts it was relying upon in order to make the March 1, 2011 payment to BIS. I also requested via counsel on May 3, 2011, that Balli clarify certain banking statement entries.

I have in my discretion considered in full Balli's response and the supplemental material it has provided, and have decided as discussed further below to grant OEE's March 24, 2011 request. I find that Balli failed to make full and timely payment of the $2.6 million installment

[4] The Settlement Agreement and the Order also include a five-year suspended denial of Balli's export privileges, as well as an annual audit requirement for calendar years 2010 through 2014. The suspension of the denial order was and is conditioned on, inter alia, Balli's full and timely payment of each installment payment. OEE's March 24, 2011 request did not include a request that I revoke the suspension of the denial order.

payment that was due, under the clear terms of the Settlement Agreement and Final Order, on or before March 1, 2011. Balli sought and agreed to the payment schedule, knew that each installment payment was due no later than the agreed upon and ordered due date, and knew that the continued suspension of the $2 million suspended portion of the $15 million civil penalty was conditioned on its making each installment payment in full by the applicable due date. Balli violated the condition set forth in the Settlement Agreement and the Order and then received notice of OEE's March 24, 2011 request in accordance with the Regulations, as well as an opportunity to respond OEE's request.

I further find unpersuasive Balli's efforts to excuse its violation of the Settlement Agreement and the Order. Balli was aware of its obligations regarding the March 1, 2011 installment payment since February 2010, and thus had more than a year to ensure that it made full and timely payment by March 1, 2011, including six months from the preceding installment payment, well before any unrest began in Egypt in late January 2011.

Moreover, evidence shows that rather than arranging its affairs to ensure compliance with its civil penalty payment obligations, Balli was focused instead on pursuing business opportunities and deals that were not consistent with meeting its obligations under the Settlement Agreement and the Order or ultimately with Balli's contentions in response to OEE's request. On February 16, 2011, Balli submitted a request to BIS seeking authorization or approval to enter into an agreement with a third party under which Balli would pay the third party $10 million to re-acquire rights to the aircraft bearing MSN's 24383 and 26879, respectively. This Balli request was made after the unrest had begun in Egypt, and at a time when Balli asserts that it was having trouble securing the funds to make the civil penalty installment payment. In addition, Balli's own records show that it had received approximately $3 million from the UAE customer referenced in its response materials so as to have been able to make the installment payment in full no later than March 2, 2011. Balli chose, however, to make an approximately

$3 million payment towards an existing trade finance loan and to delay until March 10, 2011, before making the installment payment required under the Settlement Agreement and the Order.

Furthermore, I do not find Balli's contentions persuasive even assuming *arguendo* that Balli was relying on receiving payment from one or more of the four Middle Eastern customers referenced in its April 5, 2011 letter.[5] That response letter and documents subsequently produced by Balli indicate that knowing the repercussions of not making full and timely payment, Balli chose to take the foreseeable risk, especially to a sophisticated party like Balli, of relying on the payment of receivables due either shortly before the March 1, 2011 due date under the Settlement Agreement and the Order, or in one instance, *after* that deadline. One of the payments was due less than two weeks before the March 1, 2011 payment deadline, and none more than approximately five weeks beforehand. I also note that in at least one of the three transactions involving shipments to Egypt, the items were shipped after the unrest began in that country and after, according to Balli's own account, a payment for a January 2011 shipment due on January 26, 2011 had been delayed. If Balli had foregone this transaction, valued at more than six times the March 1, 2011 installment payment amount, it apparently would have had ample sums on this basis alone to have made full and timely payment.

Balli also asserts that it provided "advance" notice to BIS of its funds flow issue relating to the March 1, 2011 installment payment. I do not agree that a letter to me dated Monday, February 28, 2011 (or a phone call to the Office of Chief Counsel the afternoon of Friday, February 25, 2011), constitutes advance notice with regard to a March 1, 2011 payment deadline. This is especially so given that by Balli's own account, its UAE customer began seeking an extension on January 20, 2011--almost six weeks before the March 1, 2011 payment deadline under the Settlement Agreement and the Order--regarding a payment due to Balli no later than

[5] Balli has not actually demonstrated that it did not have access to other assets, funds or resources in order to make timely payment of civil penalty due on or before the March 1, 2011, or, for example, that events in Egypt affected its dealings with the UAE customer referenced in its response.

March 18, 2011, and that one of its Egyptian customers had failed to make a payment due on January 26, 2011--nearly five weeks before the civil penalty installment was due to the U.S. Government.

In sum, I find that the record contradicts Ball's contentions that granting OEE's request would be "excessive, disproportionate and unwarranted" on the ground that payment was "just over a week late," as well as that Balli has sufficiently demonstrated its commitment to its obligations under the Settlement Agreement or that I should otherwise ignore or excuse Balli's failure to comply with the terms and conditions of the Settlement Agreement and, most significantly, the February 5, 2010 Final Order, regarding the full *and* timely payment of civil penalty amounts. Balli had actual and constructive knowledge of its obligations under the Settlement Agreement and the Order, as well as that those obligations remained unchanged after its February 28, 2011 letter to me requesting, in effect, modification of the Order. See also 15 C.F.R. § 766.18(e) ("Cases that are settled may not be reopened or appealed."). Upon entry of the Settlement Agreement and its approval via the Order, Balli assumed any risks, including those explicitly set forth in the Agreement and Order, associated with an untimely civil penalty payment. Although certain events in the Middle East may not necessarily have been foreseeable at the time it entered the Agreement, Balli is a sophisticated enterprise that holds itself out as an experienced operator in the Middle East and, as discussed above, failed in my judgment to arrange its business and financial affairs in such a manner to ensure compliance with its civil penalty payment obligations—obligations that were imposed, moreover, as a result of Balli's egregious conduct that violated U.S. export control laws and provided support to Iran and its proliferation efforts. I also note that under the terms of the Settlement Agreement and the Order, OEE's March 24, 2011 request also could have sought revocation of the five-year suspended denial order, but that OEE refrained from requesting activation of the denial order at this time.

IT IS THEREFORE ORDERED:

FIRST, that the suspension of the $2,000,000 suspended portion of the civil penalty set forth in the February 5, 2010 Final Order is hereby revoked, and that this now-activated $2,000,000 civil penalty amount shall be paid to the U.S. Department of Commerce within fifteen (15) days of the date of this Order.

SECOND, I hereby confirm that in accordance with the acceleration clause contained in the February 5, 2010 Final Order, the two remaining $2,600,000 installments payments scheduled for September 1, 2011 and March 1, 2012, respectively, became due and owing upon Balli's failure to make the March 1, 2011 installment payment on or before that due date, and that BIS will consider this payment of $5,200,000 to be timely made if made within fifteen (15) days of the date of this Order.

Payment of civil penalty amounts referenced above totaling $7,200,000 shall be made by the means and per the instructions pertaining to the February 5, 2010 Final Order in this matter.

This Order is effective immediately and copies shall be served on Respondents consistent with the Regulations. A copy of this Order also shall be made available to the public.

David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 19 day of May 2011