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CASE STUDY OF A BIS CHARGING LETTER

By Peter Quinter *

The United States government concluded one of its most significant export enforcement sagas March 23, 2015. This case against a Turkish airline executive is interesting to export law practitioners for a variety of reasons and provides a lesson on the process of responding when Commerce enforcement officials knock on your proverbial door.

As reported in the Federal Register on April 3, 2015, the Bureau of Industry and Security (BIS) had charged Yavuz Cizmeci, president and chief executive officer of a Turkish charter airline, Ankair, with a single count of violating the terms of a denial order by facilitating the re-export of a Boeing aircraft to Iran in June 2008 (see related story, page 9).

A subsequent investigation by the BIS Office of Export Enforcement (OEE) concluded that Cizmeci submitted false documents to Turkish authorities, claiming the plane was bound for Pakistan when it was destined instead for Tehran, Iran.

After pursuing other, numerous companies since 2008, BIS focused its attention on Cizmeci and Ankair. In a Charging Letter dated June 25, 2013, OEE Director Douglas Hassebrock alleged that Cizmeci had violated the Export Administration Regulations (EAR). Specifically, Cizmeci was charged with a violation of the 15 CFR 764.2(k) – causing, aiding or abetting action contrary to the terms of a temporary denial order. The Charging Letter stated, in part:

“Between on or about June 26, 2008 and on or about June 27, 2008, Ankair...participated in a transaction concerning a U.S.-origin Boeing 747 aircraft,...and also facilitated the acquisition, possession, and/or control by Iran Air of the aircraft...

“At the time Ankair engaged in the described actions its export privileges and those of Iran Air’s had been denied under the Regulations by a TDO [Temporary Denial Order], which had issued on June 6, 2008. The TDO prohibited Ankair from ‘directly or indirectly, participating in any transaction involving the Boeing 747...’”

The letter said Cizmeci could face a penalty under law of \$250,000 or twice the value of the prohibited transaction. Because BIS had determined the sale price of

the Boeing 747 was \$5.3 million, that penalty could have been as much as \$10.6 million.

After almost two years of contentious litigation pursuant to EAR Part 766 (Administrative Enforcement Proceedings) before an administrative law judge, which included discovery and motion practices similar to that of a federal court, Cizmeci and the BIS entered into a settlement agreement. The case was concluded with the issuance of an “Order Relating to Yavuz Cizmeci” signed by David Mills, assistant secretary of Commerce for export enforcement. That order provided essentially:

1. Cizmeci was required to pay \$50,000 within 30 days of the order, and
2. Cizmeci was prohibited from directly or indirectly participating in any transaction involving an item exported or to be exported from the United States for a period of 20 years.

The settlement agreement and order also explicitly state that Cizmeci “shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Charging Letter or this Order.”

BIS Pursues Foreign Company

As noted, this case is interesting to export law practitioners for a variety of reasons:

1. The U.S. government pursued the case for seven years;
2. The U.S. government pursued the case against a foreign company;
3. The U.S. government pursued the case against an officer of a foreign company;
4. Cizmeci, as the respondent in the administrative legal proceedings, pursued his rights under EAR Part 766;
5. Cizmeci was added on March 23, 2015, to the BIS Denied Persons List.

In that Cizmeci is a Turkish national, lives in Istanbul, Turkey, and was no longer the president and CEO of Ankair when the Charging Letter was issued on June 25, 2013, and in that Ankair itself had filed for bankruptcy in an Istanbul court as of the issuance of the letter, and it had stopped operating as an airline as of the date of the

Charging Letter, the case demonstrates the aggressiveness of BIS in pursuing such matters.

Between June 6, 2008, which is the date that BIS issued its first TDO, and the issuance of the Charging Letter on June 25, 2013, the agency had aggressively conducted numerous investigations and litigation against other companies related to the transaction.

For example, in the October 9, 2008, Federal Register, then-BIS Under Secretary Mario Mancuso affirmed the Recommended Decision and Order of the Administrative Law Judge issued on Sept. 16, 2008, against Galaxy Aviation Trade Company, Ltd., a United Kingdom company based in London, England, and certain individuals.

The answer as to why BIS so aggressively and for so long continued its enforcement action against anyone connected with the Boeing 747 transaction may be explained in another Federal Register notice BIS published Dec. 11, 2008 (73 FR 75389).

In summary, BIS described the actions of Sam David Mahjoobi, who signed the contract with Ankair to purchase the Boeing 747. Mahjoobi signed the contract on behalf of Galaxy, which had the same address as Intelligent Aviation Services, Ltd.

Both companies listed Mahjoobi as a corporate officer. Both companies were believed to be front companies for the Islamic Republic of Iran. The U.S. government was not about to let the government of Iran procure otherwise prohibited items, whether they are defense items on the United States Munitions List or non-military exports that were licensed by the Commerce.

Administrative Process

All persons and companies suspected of violating the Export Administration Act or EAR, or any order, license or authorization issued under them, are entitled to challenge any BIS accusation, invoking procedures set out in EAR Part 766. Commerce's Office of Chief Counsel for BIS represents the agency in such cases, and the accused person or company can be represented by private legal counsel.

An administrative law judge (ALJ) will be assigned the case, and depositions of BIS or other U.S. government officials may take place, BIS must respond to interrogatories and requests for production of documents, status hearings may be held, and motions for summary judgment may be filed.

Ultimately, a hearing could be scheduled, and the ALJ could issue a Recommended Decision to the BIS under secretary. If the under secretary adopts the recommendation, that decision may be appealed to the United States Court of Appeals for the District of Columbia, however, that is extremely rare.

Conclusion

Based on the facts and circumstances of this case, one can be sure that a violation of U.S. export control laws and regulations, especially if there is any connection with Iran, will be equally and as aggressively pursued by BIS.

Fortunately, there remains procedural and substantive due process for those accused to understand why the government has initiated an investigation, to learn the government's facts and arguments behind a Temporary Denial Order or Charging Letter, and to respond timely to them.

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