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Balli Fined $17 Million for Lease of Boeing Planes to Iran

In what the Justice Department calls "one of the largest fines for an export violation in BIS history," Balli Group, plc, of London, England, and its subsidiary, Balli Aviation Ltd., agreed Feb. 5 to pay $17 million in criminal and civil penalties to settle charges of conspiracy to export Boeing airplanes to Iran and violating a Temporary Denial Order (TDO) that the Bureau of Industry and Security (BIS) issued against them in 2007. The global settlement involved BIS, Treasury's Office of Foreign Assets Control (OFAC) and the Justice Department.

> Balli, a privately held brokering firm that trades primarily in steel and commodities and provides trade finance, pleaded guilty in D.C. U.S. District Court to a two-count criminal information and agreed to pay a $2 million criminal fine. Balli's website indicates that it has two offices in Tehran, Iran.

In their deal with BIS and OFAC, Balli and Balli Aviation were assessed a $15 million civil penalty. They will be allowed to pay $13 million of the fine in five semi-annual payments of $2.6 million each over the next two years. BIS will suspend and then waive the final $2 million, if the firms remain in compliance with U.S. export controls and hire an outside consultant to audit their operations annually for five year.

According to the government, Balli Aviation had leased Blue Airways three Boeing airplanes that were supposedly to be operated out of Yerevan, Armenia. Balli Aviation and Blue Airways are both owned by Balli Holdings, BIS said in its TDO. BIS said it had evidence the planes actually were being operated by Iran's Mahan Airways and flying in and out of Tehran. No export licenses had been obtained. BIS also said it had information that Balli was about to lease three more planes to Blue Airways, and the TDO was intended to block that transaction.

Government sources say TDOs against foreign firms such as Balli are becoming more effective because foreign banks are now adding the TDO list to their screening filters to prevent transfers of funds to Iran in violation of U.S. sanctions. Once a company's transaction get caught by these filters, their international finances can become frozen, enforcement officials say.

BAE Avoids Tougher Sanctions in $400 Million Deal with Justice

An agreement to pay a $400 million criminal fine may not seem like a good deal for United Kindom's BAE Systems, plc., but the deal successfully avoids a worse fate for the company – debarment from selling to the Defense Department. BAE Feb. 5 reached an agreement with the

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Justice Department and the UK's Serious Fraud Office (SFO) to settle a five-year investigation into what the firm said were false statements to the U.S. government and breach of duty. A less-than-forthcoming BAE press release failed to mention that the investigation and large settlement stemmed from allegations that it had paid millions in bribes to win defense contracts in Saudi Arabia. BAE agreed to plead guilty to one count of conspiracy to make a false statement to the U.S. government and will pay a $400 million fine to settle that charge. It also agreed to plead guilty to one charge of breach of duty under UK law in its deal with SFO and will pay a £30 million fine or roughly $40 million to settle that charge.

> By agreeing to plead guilty to conspiracy, BAE won't have to face charges under the Foreign Corrupt Practices Act (FCPA). A conviction on an FCPA charge is grounds for debarment from doing business with the Pentagon. BAE is one of the top five contractors to Defense. In the firm's 2008 annual report, the last published, it said it sold the Pentagon £7.094 billion or about $12.7 billion in military equipment and services that year.

The annual report also said an investigation announced in 2004 by the SFO "into suspected false accounting and corruption is continuing." It said the Justice Department had notified BAE in June 2007 that the department "had commenced an investigation relating to the Group's compliance with anti-corruption laws, including its business concerning the Kingdom of Saudi Arabia." Both the U.S. and UK cases have been widely reported in the intervening years.

The BAE press release made it sound as though the settlements were about another corruption charge related to sales in Tanzania. "In connection with the sale of a radar system by the Company to Tanzania in 1999, the Company made commission payments to a marketing adviser and failed to accurately record such payments in its accounting records," said BAE Chairman Dick Olver in a statement. "These settlements enable the Company to deal finally with significant legacy issues," he said; noting that BAE has "systematically enhanced its compliance policies and processes" since then.

An undetermined part of the £30 million fine in the UK will go as a payment for the benefit of the people of Tanzania. "I am very pleased with the global outcome achieved collaboratively with the DoJ," said SFO Director Richard Alderman. "This is a first and it brings a pragmatic end to a long-running and wide-ranging investigation," he said.

Trade Figures for 2009 Show Trade Recovery Underway

A graph of U.S. export and import trade figures for 2009 resembles what Wall Street analysts might call a "cup or saucer" stock pattern, with trade numbers slopping downward throughout the first half of the year but making a slow and steady climb in the second half (see table at left). For stock pickers, that's a good sign. The second-half improvement still left trade tallies for 2009 far below their levels in 2008, with total trade in 2009 falling by the sharpest decline since the Great Depression.

Change in Goods Exports by Quarter 2009
(in millions)

Quarter	Exports	% Change from Previous Quarter	% Change from Year Ago Quarter
1st Quarter	$249,109	-14.3%	-21.1%
2nd Quarter	245,869	-1.3	-26.1
3rd Quarter	263,646	+ 7.2	-22.0
4th Quarter	286,950	+ 8.8	-12.5

U.S. trade with almost every major trading partner and in almost every sector declined in 2009 (see table page 3). Exports of manufactured goods dropped 18%, while goods imports fell 26%. The sharp decline in imports may explain why the expected rebound in antidumping complaints never materialized. It was hard to find an import sector showing a rising level of imports, a key element in a successful antidumping case. Of the major exporting and importing sectors, pharmaceutical trade was the only one that bucked the tide of red ink, with exports rising 14% and imports up 3%. Trade in services held up much better than the manufacturing sector. Services exports in 2009 of $507.5 billion were only down 7.7% from 2008. Services imports of $371.2 billion were off just 8.4% from the year earlier.

Preliminary 2009 vs. 2008 U.S. Merchandise Trade Figures
(in billions)

	2009 Exports	2008 Exports	% Change	2009 Imports	2008 Imports	% Change
Total	$1,046	$1,277	-18%	$1,563	$2,117	-26%
BY COUNTRY/REGION						
Canada	205	261	-21	225	339	-34
Mexico	129	151	-15	176	216	-19
European Union (27)	221	272	-19	281	368	-24
Germany	43	55	-22	71	97	-27
France	26.5	29	-7	34	44	-23
United Kingdom	46	54	-15	47	59	-20
Japan	51	65	-22	96	139	-31
China	70	70	--	296	338	-12
NICs: HK, Singapore, Taiwan, Korea	90	109	-17	87	107	-19
South/Central America	110	137	-20	108	160	-33
BY SECTOR						
Agriculture	94	108	-13	81.6	89	-8
Aircraft, parts, engines	74.7	74	+1	30.3	35.4	-14
Autos, parts, engines	81.6	121.5	-33	160	233.8	-32
Clothing	2.9	3.2	-9	69.3	78.9	-12
Chemicals-Organic	27.6	34.3	-20	42.1	47.8	-12
Chemicals-Inorganic	10.3	12.8	-20	10.8	16.8	-36
Petroleum, total categories	49.2	67.2	-27	254	453	-44
Iron & Steel	12	18.5	-35	18.2	38.9	-53
Metalworking Machines	5.3	7.4	-28	5.7	9.6	-41
Pharmaceuticals	46.1	40.4	+14	81.5	78.9	+3
Semiconductors	37.5	50.6	-26	21.3	25.7	-17
Telecommunications	28.7	32.8	-13	37.3	44.8	-17
Wood Products	1.7	2.3	-26	6.2	8.4	-26

The decline in services exports was across the board in most sectors. Travel exports decline by $15.7 billion; other transportation, including freight and port services was down $14.0 billion; income from royalties and license fees slid $8.2 billion; passenger fares decreased by $4.3 billion; and other private services, including financial services, were down $3.4 billion. Still, the U.S. ran a $136.3 billion surplus in services.

Although both exports and imports declined in 2009, the drop in imports was much greater. As a result, the overall trade deficit in goods and services plunged 45% to $381 billion from $696 billion in 2008.

While the $226 billion deficit with China draws the most public attention, the combined deficits in just three industrial sectors – petroleum (-$204.8 billion), clothing and shoes (-$83.3 billion) and autos and parts (-$78.4 billion) – accounted for $366.5 billion (96%) of the deficit.

The 44% drop in petroleum imports played a major role in the decrease in imports and the deficit, but the recession's impact on the auto market also contributed with a 32% slide in imports of autos and auto parts, along with declines in industrial sectors such as steel, chemicals, semiconductors and telecommunications equipment.

Appellate Court Says Tariffs Can Face Constitutional Challenge

The Court of Appeals for the Federal Circuit (CAFC) Feb. 5 upheld a 2008 Court of International Trade (CIT) ruling that tariffs can be challenged on constitutional grounds but denying a suit by Totes-Isotoner, which claimed the difference in tariff rates between men's gloves

(14%) and women's gloves (12.6%) was unconstitutionally discriminatory. The appellate court agreed with a three-judge CIT panel that the CIT has jurisdiction to consider constitutional issues and Totes had standing to bring its suit based on its claim that it was denied equal protection under the law (see **WTTL**, July 14, 2008, page 4). The CAFA also agreed with the CIT decision to dismiss the suit because Totes had failed to show discrimination.

> "It is 28 U.S.C. Section 1581(i), the residual jurisdiction provision, and not 28 U.S.C. Section 1581(a) that provides the jurisdictional mechanism for a challenge to the constitutionality of a tariff," wrote CAFC Judge Timothy Dyk. Nonetheless, "Totes has failed to allege facts sufficient to show that men's and women's gloves are property of the same class," he stated. "Men's and women's gloves are separate commodities, moving in different channels of trade and presenting different commercial issues with respect to domestic manufacturers," he added.

The CAFC disagreed with the government's claim that Totes had not exhausted administrative remedies, saying Customs has no authority to rule on constitutional issues. It also rejected the argument that tariffs are a political question because they are set by legislation. "Congress, in classifying goods for the imposition of tariffs, as a general matter is not concerned with the characteristics of the ultimate retail users of goods, but rather such classifications are designed to promote particular trade policy objectives negotiated with other countries," he stated.

EU Wants $311 Million in Retaliation for U.S. Zeroing Practices

The European Union (EU) asked the World Trade Organization (WTO) Jan. 29 for authorization to impose retaliatory tariffs on $311 million-worth of U.S. goods because of Washington's failure to implement a WTO ruling against the use of "zeroing" in antidumping investigations and administrative reviews. The U.S. had until April 9, 2007, as a "reasonable period of time" to comply with a final 2006 WTO ruling in the dispute, and the WTO Appellate Body (AB) in May 2009 ruled that the U.S. hasn't met that deadline (see **WTTL**, May 18, page 3). In its request, the EU didn't identify which U.S. exports would be the target of the sanctions. The U.S. is expected to object to the EU request, and the case will probably go to WTO arbitration.

> The dispute covers 15 original antidumping investigations and 16 administrative reviews. A U.S. status report Feb. 8 to the WTO Dispute Settlement Board (DSB) said the U.S. has addressed the complaints against most of the original investigations either by revoking orders or recalculating dumping margins without zeroing. Still unresolved are most of the 16 administrative reviews.

In a filing to be submitted to the DSB Feb. 18, the EU will explain that the retaliation will take into account the direct trade lost to EU exports hit by the dumping orders and the amount of dumping duties. The sanctions would be in the form of either a tariff of 100% on $311 million-worth of U.S. imports or an ad valorem import tariff of 13.18% on $477 million in imports, it says. The EU says it wants to target the same sectors where damage has occurred.

* * * Briefs * * *

<u>EXPORT ENFORCEMENT</u>: Federal judge Feb. 12 imposed $25,000 fine and $4,000 special assessment on <u>Atmospheric Glow Technolgies, Inc</u>., which had pleaded guilty to its role in export violations of former University of Tennessee Professor J. Reece Roth. Firm has gone through Chapter 7 bankruptcy liquidation, so fines are moot (see **WTTL**, Dec. 21, page 1).

<u>COMMERCE</u>: Senate Feb. 11 confirmed David Mills to be BIS assistant secretary for export enforcement, Kevin Wolf to be assistant secretary for export administration and Suresh Kumar to be ITA assistant secretary and director general of U.S./Foreign Commercial Service.

<u>HAITI</u>: USTR Ron Kirk Feb. 16 in Las Vegas will announce new initiative, Plus One for Haiti, aimed at boosting exports of textiles and apparel from Haiti.