



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

September 2023

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1. OFAC Imposes Sanctions on Russian Elites Who Were Board Members of Alpha Group

On Aug. 11, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) **designated four Russian individuals**, Petr Olegovich Aven, Mikhail Maratovich Fridman, German Borisovich Khan, and Alexey Viktorovich Kuzmichev, all of whom have served on the board of Alpha Group (which owns Alpha Bank). Aven and Fridman have or had ownership interests in LetterOne Holdings S.A., but in FAQs about the designation, OFAC specifically states that LetterOne is not designated because it is not owned 50 percent or more by blocked persons or otherwise considered blocked property or interest in the property of blocked persons.

2. Commerce Now Requires That Requester's Identity Be Named in Anti-Boycott Reports

At the end of July, the Bureau of Industry and Security (BIS) introduced **a new reporting obligation** for disclosing boycott-related requests to the Office of Antiboycott Compliance. The reporting party must now reveal both the requesting entity's identity and the origin of the request. This change serves a dual purpose: discouraging anti-boycott requests and reinforcing BIS' commitment to enhanced enforcement. Navigating anti-boycott compliance can be intricate due to conflicts between the U.S. Internal Revenue Code and the Export Administration Regulations (EAR), but U.S. companies should ensure that they and their subsidiaries are prepared to comply with their obligations under U.S. law.

3. Build America, Buy America Guidance

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for more information about any matters in this newsletter:

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The White House has issued [final guidance](#) to enforce the use of American-made materials in federal infrastructure projects. Effective Oct. 23, companies engaged in federally funded infrastructure endeavors must adhere to these rules, which are aligned with the Build America, Buy America Act. The guidance mandates the use of domestically produced iron, steel, manufactured products, and construction materials in federally funded infrastructure projects. Notably, 55 percent of the total cost of components in manufactured products must be produced in the United States in order to meet the domestic content threshold. Waivers can be granted under certain circumstances, including public interest, material unavailability in the United States, or substantial cost increase exceeding 25 percent. This guidance seeks to strengthen domestic manufacturing while adhering to international agreements. The guidance further clarifies definitions, applicability, waiver processes, and exemptions related to the requirements.

4. BIS Advisory Opinion on Deemed Exports

BIS published an advisory opinion issued on July 9, clarifying that if a U.S.-based subsidiary has export authorization for export of a certain software or technology to its foreign parent company, the U.S. subsidiary is also authorized to release such items to the permanent and regular employees of the parent company if those employees are on temporary assignment in the United States. To qualify, the items must be within the scope of the original license. Similarly, the advisory opinion states that in the cases when the U.S. subsidiary has export authorization to export software or technology to its foreign parent, the export of any software or technology, within the scope of the original license, created by the foreign employees of the foreign parent while on temporary assignment to the U.S. subsidiary is also authorized. Further, BIS confirmed that, as long as the software or technology was not altered, enhanced, or otherwise changed while in the United States, any software or technology imported from the parent company's country of origin for use by the U.S. subsidiary can be exported back to that same country using License Exception TMP. For more details, see [the July 9 advisory opinion](#).

5. Tornado Cash Can Be Designated as an SDN

The Western District Court of Texas [has decided](#) in favor of OFAC in the challenge following last year's designation of the virtual currency mixer Tornado Cash. Tornado Cash users have been fighting both in the court and in the press, arguing that Tornado Cash cannot be designated as a Specially Designated National (SDN) because the crypto mixer is not an entity that can be sanctioned. However, the court decided that OFAC's designation of Tornado Cash did not exceed OFAC's statutory authority and is not plainly inconsistent with its regulations. As a result, U.S. persons remain prohibited from dealing with Tornado Cash and are required to block all property of Tornado Cash; thus any funds routed through Tornado Cash must be frozen and reported to OFAC.

TRADE TIP OF THE MONTH: How to Comply With Both Immigration Law and Export Controls

On the heels of a recent settlement with General Motors, [the U.S. Department of Justice is suing SpaceX](#), alleging the space company discriminated in its hiring practices,

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notably against refugees and people granted asylum in the United States. According to the lawsuit, between 2018 and 2022, SpaceX wrongly claimed that U.S. export control laws required that SpaceX limit hiring to U.S. citizens and lawful permanent residents. Export control laws do not provide justification for or authorize employers to discriminate against non-U.S. citizens, as doing so would be in violation of the Immigration and Nationality Act. Rather, narrow exceptions in anti-discrimination rules exist to allow employers to comply with national security laws, such as export controls, when hiring. However, these narrow exceptions do not permit employers to discriminate against refugees, asylees, or those under protected status, who are considered U.S. Persons for export compliance. The DOJ recently published a [fact sheet](#) to help companies avoid immigration-related discrimination while complying with U.S. export control laws.

Additional Resources

- **Client Alert:** "[Bipartisan Bill Seeks to Delay FinCEN's Beneficial Ownership Reporting Requirements](#)"
August 15, 2023
Lowenstein Sandler LLP
[Robert A. Johnston Jr.](#), [Paula A. Ladd](#), [Jimmy Kang](#), [Samantha Sigelakis-Minski](#)
- **Article:** "[CFIUS Report Signals Trend Toward Fewer Declarations, Lawyer Says](#)"
August 28, 2023
Export Compliance Daily
[Laura Fraedrich](#)
- **Article:** "[PE, VC investors on Biden's China tech ban: We're ready](#)"
August 10, 2023
PitchBook
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