



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

December 2022

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1. Continued Enforcement Highlights the Importance of Compliance Programs

- **Importer Pays \$3.25M Settlement in FCA Case**
A California importer paid \$3.25 million (Law360 subscription required to view) to settle a whistleblower suit brought by a former employee of its overseas supplier under the False Claims Act (FCA). RGE Motor Direct Inc. allegedly used false invoices (Law360 subscription required to view) to avoid paying the 25 percent Section 301 duty on imports from China. This action continues the government's recent enforcement trend of using the FCA to prosecute companies for customs compliance failures. The action also underscores the need for companies to ensure their entry procedures, checks, and records are current.
- **Magnet Company Facing Charges for Export Violations and Defrauding the DOD**
Quadrant Magnetics LLC, a Kentucky magnetics manufacturing company, and three individuals face criminal charges for allegedly violating the Arms Export Control Act and International Traffic in Arms Regulations, committing wire fraud, smuggling goods, and defrauding the Department of Defense. Between January 2012 and December 2018, the defendants allegedly conspired to send export-controlled technical data related to U.S. military projects to a Chinese company without obtaining required U.S. government licenses. Quadrant also allegedly imported magnets that were smelted and magnetized in China and sold them to two U.S. companies, which used the magnets in components sold to DOD, thereby violating the requirement that rare earth magnets sold to DOD must be produced and magnetized in the United States or another approved country. If convicted, the individuals involved could face up to 20 years for each charge of exporting technical data without a license, among other potential penalties.

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for more information about any matters in this newsletter:

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- **Deemed Export Requirements Collide With Discrimination Concerns**

Aero Precision LLC, a Washington state firearms manufacturer, has entered into a settlement agreement with the Justice Department to resolve immigration-related discrimination claims. Between April and September 2020, Aero Precision screened out eligible employment candidates because they were not U.S. citizens or lawful permanent residents, with the aim of complying with deemed export rules. However, while deemed export rules require an export license to be obtained to release controlled technology to a foreign person in the United States if a license would be required to send the item to their country of nationality, asylees and refugees are considered to be U.S. persons under the International Traffic in Arms Regulations. Thus, by screening out asylees and refugees, Aero Precision placed unnecessary restrictions on employment and violated the Immigration and Nationality Act.

2. Department of Commerce Revokes Russia's Market Economy Status

The Department of Commerce has **revoked Russia's** status as a market economy, which will impact the calculation of anti-dumping duties on Russian goods, generally leading to higher duties. While Russia was granted market economy status 20 years ago, Commerce has determined that, due to extensive government involvement in the Russian economy, prices for goods no longer accurately reflect the laws of supply and demand. Other countries on the department's nonmarket economy list include China, Vietnam, and nine former Soviet republics. Commerce said in a statement, "[T]his decision gives the United States the ability to apply the full force of the U.S. anti-dumping law to address the market distortions caused by increasing interference from the Russian government in their economy."

3. CBP Detains More Than 1,000 Solar Shipments Over Suspected UFLPA Violations

According to **Reuters**, U.S. Customs and Border Protection (CBP) has detained more than 1,000 shipments of solar panels and components imported from China's Xinjiang region since the Uyghur Forced Labor Protection Act (UFLPA) went into effect in June. Polysilicon, one of the materials used in the production of solar cells, is one of the "high-priority sectors for enforcement" according to the UFLPA. These detainments demonstrate that CBP continues to prioritize and ramp up enforcement of the UFLPA, and as a result, importers with supply chains touching China must ensure that their import and social compliance programs and associated supply chain tracing records are up to date. In the event of a CBP seizure under the UFLPA, a threshold requirement for applying for admissibility into the United States is an existing compliance program that conforms to CBP's guidance. The best way to expedite an admissibility review by CBP is to submit clear and complete translated documentation that traces the origin of all parts/components/materials within the 30-day response window.

4. Investment Firm Nabs CFIUS Approval to Acquire United States SAAS Business

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In connection with its merger with software as a service provider Zendesk, an investor group led by investment firms Permira in the UK and Hellman & Friedman in the United States recently filed a joint voluntary notice with the Committee on Foreign Investment in the United States (CFIUS), which **cleared** the transaction. By filing a voluntary notice with CFIUS, parties can obtain a safe harbor from future CFIUS intervention in the transaction if the committee agrees that no national security concerns exist.

5. USTR Extends Exclusions of COVID-19-Related Products From China Section 301 Tariffs

The Office of the United States Trade Representative **announced** on Nov. 23 a further 90-day extension of the COVID-19-related product exclusions in the China Section 301 investigation. The exclusions for these **81 medical-care products** were originally granted on Dec. 29, 2020, and are now valid through **Feb. 28**.

TRADE TIP OF THE MONTH:

Companies have until Jan. 23 **to comment** on the foreign availability of export-controlled items. If you are interested in removing export controls on certain items, this is your chance to show that the technology is already in other countries. Any comments should be submitted by email to Mark Crace at mark.crace@bis.doc.gov or to PRAComments@doc.gov. The subject line should reference OMB Control Number 0694-0004 and no confidential business information or otherwise sensitive or protected information should be submitted.

Additional Resources

- **Article:** "Tornado Cash Sanction Has Wider Liability Implications For Crypto Sector"
November 6, 2022
Brave New Coin
Christian C. Contardo, Doreen M. Edelman, Laura Fraedrich, Abbey E. Baker
- **Article:** "Want to work with the Pentagon? Here are 8 crucial tips to successful pitching"
November 7, 2022
Technical.ly
Jeffrey B. Jones
- **Upcoming Webinar:** "[G-BRIDGE Lunch & Learn Series - Session 3: Intellectual Property Laws and Their Intersection With Government Contracting](#)"
December 14, 2022
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