

Red Notice

A Monthly Update on Global Investigations and Prosecutions



June 2017

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ANTICORRUPTION DEVELOPMENTS

Linde Group Receives DOJ Declination Pursuant to FCPA Pilot Program

On June 16, 2017, German-based chemical and gas company Linde Group's American affiliates, Linde North America Inc. and Linde Gas North America LLC (collectively, "Linde"), executed a declination letter agreement with the Department of Justice (DOJ) pursuant to its Foreign Corrupt Practices Act (FCPA) Pilot Program. Specifically, the DOJ advised that it was closing its investigation of Linde concerning violations of the FCPA in the Republic of Georgia. Additionally, through the letter agreement, Linde agreed to disgorge \$7,820,000 and to forfeit \$3,415,000 in "corrupt proceeds."

According to the letter agreement, from approximately 2006 to December 2009, Linde, through its subsidiary Spectra Gases, Inc., made corrupt payments to high-level officials at the National High Technology Center (NHTC) of the Republic of Georgia, a 100 percent state-owned and controlled entity, in connection with its purchase of certain income-producing assets from the NHTC. Although Linde trades on German stock exchanges, neither it nor its U.S. units have securities registered with the Securities and Exchange Commission (SEC).

Linde's declination marks the seventh under the DOJ's FCPA Pilot Program and the first of 2017. *Red Notice* previously covered the FCPA's Pilot Program [here](#), and more information about the program, including all seven declinations, is available [here](#). Specifically, Linde's declination letter agreement is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

Teva Subsidiary Pleads Guilty to Conspiring to Violate the FCPA

On June 16, 2017, Teva LLC, the wholly owned Russian subsidiary of generic-drug giant Teva Pharmaceutical Industries Ltd., pleaded guilty to one count of conspiring to violate the FCPA in the U.S. District Court for the Southern District of Florida. In December 2016, Teva Pharmaceutical Industries Ltd. and its subsidiary executed deferred prosecution agreements with the DOJ and agreed to pay \$519 million in criminal penalties, disgorgement and prejudgment interest. However, only Teva LLC admitted guilt, thus warranting the separate proceedings for the two entities.

Red Notice previously covered Teva's resolution of the enforcement actions [here](#). For more information, see *Law360's* coverage [here](#).

Former Banker Pleads Guilty as Part of FIFA Investigation

On June 15, 2017, Jorge Arzuaga, a former banker, pleaded guilty before the U.S. Federal District Court for the Eastern District of New York to conspiracy to commit money-laundering in connection with the DOJ's investigation of corruption within FIFA—the international governing body for soccer. According to the DOJ's information, from 2010 to 2015, Arzuaga, a 56-year-old Argentinian citizen, admitted to arranging – including by opening a bank account in the name of a shell company – more than \$25 million in bribes from an Argentine sports marketing firm to the president of the Argentine Football Association, Julio Grondona, who was also a senior vice-president at FIFA. After Grondona's death, Arzuaga arranged for the money to be distributed to his heirs. In return for facilitating these payments, the DOJ alleges that Arzuaga received more than \$1 million, which he agreed to forfeit to the DOJ. He is scheduled to be sentenced on January 4, 2018.

The DOJ's information is available [here](#) and Forfeiture Order is available [here](#). For more information, see *The New York Times's* coverage [here](#), *The Wall Street Journal's* coverage [here](#), *The Washington Post's* coverage [here](#) and *The FCPA Blog's* coverage [here](#).

Brian A. Benczkowski Nominated to Head DOJ Criminal Division

On June 6, 2017, President Trump nominated Brian A. Benczkowski to head the DOJ's Criminal Division. Benczkowski served for seven years with the DOJ under President George W. Bush and also was part of President Trump's DOJ transition team. At the DOJ, Benczkowski served as chief of staff to Deputy Attorney General Mark Filip and then to Attorney General Michael Mukasey. He has also held positions in the DOJ's Office of Legal Policy; Office of Legislative Affairs; and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Benczkowski is currently a partner at a prominent law firm whose practice focuses on litigation and white-collar criminal defense. Benczkowski's nomination requires Senate confirmation, and no hearing on the nomination has been scheduled.

The White House Press Release announcing Benczkowski's nomination is available [here](#). For more information, see *The National Law Journal's* coverage [here](#).

Supreme Court Rules that Five-Year Statute of Limitations Applies to SEC Disgorgement

On June 5, 2017, the Supreme Court in *Kokesh v. SEC* unanimously held that the SEC's equitable disgorgement remedy is subject to a five-year statute of limitations because it is a "penalty" within the meaning of 28 U.S.C. § 2462, which governs "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture." Before *Kokesh*, some circuits had held that the SEC could obtain disgorgement of the entire amount of the ill-gotten gains or losses avoided, even those that extended well beyond the five-year statute of limitations associated with most federal securities laws. *Kokesh* clarifies that both civil penalties and disgorgement are subject to the same five-year limitations period.

This case arose following the SEC's 2009 complaint against Charles Kokesh alleging violations of various securities laws by concealing his misappropriation of \$34.9 million from four business development companies beginning in 1995. The SEC sought monetary civil penalties, an injunction barring Kokesh from future violations and disgorgement of all ill-gotten gains. After a jury found Kokesh liable, the district court applied the five-year limitations period under § 2462 to the civil penalties, but not to the disgorgement order, on the ground that disgorgement was not a "penalty" within the meaning of § 2462. The practical effect was that Kokesh was

required to disgorge \$29.9 million in ill-gotten gains from outside the five-year limitations period (as well as \$18.1 million in prejudgment interest). The Supreme Court's *Kokesh* decision reverses this holding and is expected to have a significant impact on one of the SEC's most powerful enforcement weapons, including in FCPA enforcement actions.

The Supreme Court's decision is available [here](#). Akin Gump's coverage of the decision is available [here](#). *Red Notice* previously covered the *Kokesh* proceedings [here](#) and [here](#). For more information, see *The New York Times*' coverage [here](#), *The Wall Street Journal*'s coverage [here](#), *The Washington Post*'s coverage [here](#) and *The FCPA Blog*'s coverage [here](#).

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

AIG Agrees to a \$148,698 Settlement with OFAC in Connection with Alleged Sanctions Violations Relating to Iran, Sudan and Cuba

On June 26, 2017, the Department of the Treasury's Office of Foreign Assets Control (OFAC) announced that American International Group, Inc. (AIG) agreed to pay \$148,698 to settle civil liability involving 555 apparent violations of U.S. sanctions programs targeting Iran, Sudan and Cuba. According to the OFAC press release, the apparent violations concern the extension of maritime insurance to shippers going to or from Iran, Sudan and Cuba in violation of U.S. sanctions on these countries.

During the 2007 to 2012 time frame, AIG maintained an OFAC compliance program that called for the use of exclusionary clauses in insurance policies that implicated U.S. sanctions. Despite these compliance safeguards, however, OFAC determined that some of these exclusionary clauses were too narrow in scope and were not effective in practice. OFAC also determined that some parties also sought single shipment policies that did not contain sanctions exclusionary clauses as a means to circumvent U.S. sanctions.

OFAC considered both aggravating and mitigating factors when evaluating the settlement. Aggravating factors included AIG's repeated violations over multiple years, its violations of the policy objectives of several U.S. economic sanctions programs, and its status as a large and commercially sophisticated financial institution. Mitigating factors included AIG's previous positive record prior to the violations; its OFAC compliance program; its decision to take voluntary remedial action; and its cooperation with OFAC's investigation, including its initial voluntary self-disclosure.

For additional information, please see OFAC's press release [here](#).

California-Based Motor Vehicle Finance Corporation Reaches Settlement with OFAC in Connection with Cuba Sanctions Violations

On June 8, 2017, OFAC announced that American Honda Finance Corporation (AHFC), a motor vehicle finance company headquartered in California, agreed to pay \$87,255 to settle civil liability for 13 apparent violations of U.S. sanctions on Cuba. According to the OFAC press release, the apparent violations occurred when a Canadian subsidiary of AHFC approved and financed 13 lease agreements between an unaffiliated Canadian dealer and the Embassy of Cuba. Although AHFC had procedures in place to review transactions against OFAC's List of Specially Designated Nationals (SDN) and Blocked Persons, it did not include the names of countries subject to OFAC-administered comprehensive sanctions in its screening system. The OFAC press release insinuated that this gap contributed to the alleged violations.

In assessing the penalty amount, OFAC determined that AHFC voluntarily self-disclosed the alleged violations to OFAC and that the alleged violations constituted a non egregious case.

For additional information, please see OFAC's press release [here](#) and its web notice [here](#).

Connecticut Business Owner Pleads Guilty to Illegally Exporting Sensitive Technology to Pakistan

On June 2, 2017, the U.S. Attorney for the District of Connecticut announced that Imran Khan pleaded guilty to violating the International Emergency Economic Powers Act (IEEPA) in connection with a scheme to illegally export goods that were controlled under the Export Administration Regulations (EAR) to prohibited entities within Pakistan. According to the allegations, beginning in 2012, Khan and others purchased controlled goods before exporting them without a license to Pakistan. The goods were shipped to the Pakistan Atomic Energy Commission, the Pakistan Space & Upper Atmosphere Research Commission, and the National Institute of Lasers & Optronics, all of which are listed on the U.S. Department of Commerce Entity List maintained by the Bureau of Industry and Security (BIS) as Pakistani entities involved in nuclear or missile activities.

Khan conducted business as Brush Locker Tools or as Kauser Enterprises-USA. When asked by U.S. manufacturers about the end-user for a product, Khan either informed the manufacturer that the product would

remain in the United States, or he completed an end-user certification indicating that the product would not be exported.

Khan is scheduled to be sentenced on August 25, 2017, and faces up to 20 years' imprisonment. The matter is being investigated by the Defense Criminal Investigative Service (DCIS), Federal Bureau of Investigation (FBI), Homeland Security Investigations, U.S. Postal Inspection Service and U.S. Department of Commerce's Office of Export Enforcement.

For additional information, please see the [press release](#).

Seven People Charged for Theft of Trade Secrets to Benefit Chinese Manufacturing Company

On May 24, 2017, the DOJ issued a criminal complaint charging seven individuals with conspiracy to steal trade secrets to benefit a Chinese manufacturing company developing dual-use items. The trade secrets at issue are used in the development of naval-grade syntactic foam, which can be tailored for commercial and military uses, such as oil exploration; aerospace; underwater vehicles, including submarines; and stealth technology. According to the DOJ press release, four U.S. citizens, a Canadian citizen, and a Chinese citizen were charged and arrested for conspiring to steal trade secrets used in developing this product from the Houston, Texas, subsidiary of a global engineering firm.

The charges were announced by the DOJ's National Security Division, the FBI's Counterintelligence Division, the U.S. Department of Commerce's Office of Export Enforcement and the IRS-Criminal Investigation (IRS-CI).

For additional information, please see the DOJ press release [here](#).

Los Angeles-Area Woman Arrested for Conspiring to Smuggle Restricted Space Communications Technology to China

On May 23, 2017, Immigration and Customs Enforcement (ICE) announced that it arrested Si Chen, also known as Cathy Chen, on federal criminal charges that accuse her of conspiring to procure and illegally export sensitive space communications technology to her native China in violation of IEEPA, among other related charges.

According to the indictment, from March 2013 to December 2015, Chen purchased and smuggled sensitive items to China without obtaining the licenses from the U.S. Department of Commerce that are required under IEEPA. Those items include components commonly used in military communications "jammers" from which Chen removed the export-control warning stickers prior to shipping. Additionally, Chen is suspected of smuggling communications devices that are commonly used in space communications applications and are worth more than \$100,000. On the shipping paperwork, Chen falsely valued the items at \$500.

If convicted, Chen faces a statutory maximum penalty of 150 years in prison. Chen was taken into custody by special agents with ICE's Homeland Security Investigations, the U.S. Department of Commerce's Office of Export Enforcement and the DCIS. The National Security Division of the DOJ is leading the prosecution.

For additional information, please see the ICE press release [here](#).

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Cuba Sanctions: President Trump Announces Tightening of U.S. Sanctions While Maintaining Certain Sanctions Relief Implemented by the Obama Administration

On Friday, June 16, 2017, the Trump administration announced new changes to U.S. policy toward Cuba and instructed OFAC and BIS to "initiate a process" to adjust current regulations regarding transactions with Cuba within 30 days. It remains to be seen when new regulations will be issued, although it is likely that they are still some months away. Until the announced policy changes are implemented through new regulations, the established OFAC Cuba sanctions regulations remain in effect and unchanged.

On the day the policy changes were announced, OFAC issued initial guidance stating that its forthcoming regulations will be prospective and will not affect existing business authorized under an OFAC license. Anticipated regulatory changes include the prohibition of direct financial transactions with certain listed entities (to be identified by the Department of State) that are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services or personnel. Cuba's *Grupo de Administracion Empresarial S.A.*, an entity affiliated with the Cuban military that owns or controls many hotels, restaurants, marinas and banks in Cuba, together with its affiliates, subsidiaries and successors, is expected to be listed among the prohibited entities. Other anticipated regulatory changes include the prohibition of individual people-to-people travel to Cuba and stricter scrutiny on authorized travel to enforce adherence to the statutory ban on tourism to Cuba.

For additional information, please see the Akin Gump International Trade Alert [here](#).

U.S. Senate Passes Bipartisan Sanctions Legislation Targeting Iran and Russia

On June 15, 2017, the U.S. Senate passed a bipartisan sanctions bill that aims to expand existing U.S. sanctions on both Russia and Iran. The legislation, which received almost unanimous support in the U.S. Senate (98 votes to 2) calls for additional sanctions on Iran in connection with its ballistic missile program, support for terrorism and human rights abuses. The bill also includes a substantial expansion of sanctions Russia's energy sector and new sanctions for Russia's meddling in the 2016 U.S. Presidential Election. If passed, the bill would also codify all existing U.S. sanctions against Russia and gives Congress authority over the President's ability to lift Russia-related sanctions going forward. The bill is currently before the U.S. House of Representatives, where some lawmakers have expressed concerns over the breadth of the Russia energy-sector sanctions, indicating the possibility of further amendments prior to a final vote.

For additional information, please see coverage in *Politico* [here](#).

D.C. Circuit Reaffirms OFAC's Authority to Impose Sanctions Penalties but Remands \$4M Iran Sanctions Penalty

On May 26, 2017, the U.S. Court of Appeals for the District of Columbia Circuit reaffirmed OFAC's authority to impose sanctions penalties, but simultaneously set aside a \$4.07 million civil penalty against Epsilon Electronics. In its decision, the panel concluded that OFAC does not have to show that the exports it examines actually arrived in Iran for a shipper to be subject to sanctions, provided that the agency can show that the company had "reason to know" that the goods might ultimately end up in Iran in violation of the Iran Transactions and Sanctions Regulations. The panel also reaffirmed that, under the Administrative Procedure Act, OFAC's application of sanctions penalties receives a "highly deferential" standard of review.

OFAC alleged that Epsilon knew that 39 shipments to a Dubai distributor were marked for re-export to Iran. However, the panel ruled that OFAC completed only satisfactory analysis to bring penalties against 34 out of the 39 shipments. It concluded that OFAC did not complete adequate analysis to punish the other five shipments. Epsilon provided emails to OFAC indicating that those five shipments were to be sold exclusively in Dubai, but OFAC disregarded this evidence. The panel wrote that "OFAC failed to offer a sufficient explanation for why it did not credit the email evidence . . . Because OFAC failed to justify its conclusion that Epsilon should be held liable for the last 5 shipments as well as the first 34, the final 5 liability determinations were arbitrary and capricious."

OFAC's penalty determination for the 39 shipments totaled \$4.07 million. Because the court remanded analysis of the other five shipments back to OFAC, the panel concluded that the entire civil penalty must also be re-evaluated.

For additional information, please see the decision [here](#) and the *Law360* article [here](#).

OFAC Designates Additional Individuals and Entities Under its Russia/Ukraine-Related Sanction

On June 20, 2017, OFAC expanded its list of SDN to include 38 individuals and entities tied to the Ukraine conflict, including Ukrainian separatists and Russian government officials. As a result of the expansion, any property or interest in property of the designated persons in the possession or control of U.S. persons or within the United States must be blocked. Additionally, transactions by U.S. persons involving these persons are generally prohibited.

OFAC stated that this action was designed to counter attempts to circumvent U.S. sanctions and to maintain alignment of U.S. measures with those of its international partners. In a statement accompanying the announcement, Treasury Secretary Steven T. Mnuchin emphasized that "these designations will maintain pressure on Russia to work toward a diplomatic solution" involving the conflict in Ukraine.

For additional information, please see the OFAC SDN list [here](#) and OFAC press release [here](#).

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WRITING AND SPEAKING ENGAGEMENTS

On July 11, 2017, [Kevin Wolf](#) and [Christian Davis](#) will present on "Navigating CFIUS Risks in the M&A Process: National Security Reviews of Foreign Investments in U.S. Business," hosted by Akin Gump and ACC in Akin Gump's Washington, D.C. office. If you are interested in attending the program, please contact Natasha Hill at nhill@akingump.com.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics,

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