



International Trade & Regulatory ADVISORY ■

MAY 5, 2014

U.S. Court of Federal Claims Enjoins Air Force and Defense Contractor from Dealing with Entities Affiliated with Russian SDN

On April 30, 2014, the United States Court of Federal Claims granted SpaceX Technologies Corp.'s ("SpaceX") motion for a preliminary injunction prohibiting the United States Air Force and United Launch Services, LLC (ULS), a joint venture between The Boeing Company and Lockheed Martin Corporation, and their affiliates, from making any purchases from or payment to the Russian company NPO Energomash, or any other entity subject to the "control" of Russian Deputy Prime Minister Dmitry Rogozin, unless the court receives the opinion of the U.S. Departments of the Treasury, Commerce and State that such purchases or payments will not directly or indirectly contravene U.S. sanctions. The court's application of a "control" test differs from the 50 percent or greater "ownership" test that the Office of Foreign Assets Control (OFAC) uses to extend Specially Designated Nationals (SDN) status to affiliates of SDNs by operation of law. It therefore sets up potential confusion as to which test applies.

The injunction stems from SpaceX's complaint that the Air Force and ULS are purchasing RD-180 rocket engines manufactured by NPO Energomash for use in the Air Force's Evolved Expendable Launch Vehicle (EELV) Program. SpaceX's complaint alleges that NPO Energomash is owned and controlled by the Russian government, and that it is thus controlled by Russia's Deputy Prime Minister Dmitry Rogozin, the head of the Russian defense industry and the Russian space program. Rogozin was designated as an SDN on March 16, 2014, pursuant to Executive Order No. 13661, which declares that:

All property and interests in property [of Deputy Prime Minister Rogozin] that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) . . . are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in[.]

While Executive Order No. 13661 does not explicitly prohibit the activities described above, the Court of Federal Claims found that "the public interest and national defense and security concerns *that underlie* Executive Order No. 13661 warrant issuance of a preliminary injunction in this case..." (emphasis added). This injunction may have a significant impact on the EELV Program and other defense projects that utilize Russian components, but otherwise the implications of the ruling are limited. The Court of Federal Claims is a court of limited, specialized jurisdiction,

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

and this injunction only applies to Air Force and ULS dealings with entities controlled by Deputy Prime Minister Rogozin. It is clear that the Court of Federal Claims understands that primary authority to interpret and apply U.S. sanctions falls outside the judiciary, as the injunction will be lifted if and when Treasury, Commerce and State opine that transactions covered by the injunction do not contravene Executive Order No. 13661.

At the end of the day, OFAC is the implementing and enforcing agency that matters, and OFAC has made a point of issuing narrow, targeted sanctions against Russia. Unless OFAC announces otherwise, OFAC's position remains unchanged and the 50 percent or greater "ownership" test—not a "control" test—applies. It remains to be seen how long it will take for OFAC, Commerce and State to weigh in on this particular case, but companies whose activities are unrelated to U.S. government procurement of Russian goods, while needing to remain abreast of OFAC's evolving approach to sanctions, should not be affected by this ruling.

If you would like to receive future *International Trade & Regulatory Group Advisories* electronically, please forward your contact information to trade.advisory@alston.com. Be sure to put “**subscribe**” in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Thomas E. Crocker
202.239.3318
thomas.crocker@alston.com

BJ Shannon
202.239.3344
bj.shannon@alston.com

Kenneth G. Weigel
202.239.3431
ken.weigel@alston.com

Jon M. Fee
202.239.3387
jon.fee@alston.com

Eric A. Shimp
202.239.3409
eric.shimp@alston.com

Chunlian Yang
202.239.3490
lian.yang@alston.com

Elizabeth M. Hein
202.239.3478
elizabeth.hein@alston.com

Chad A. Thompson
202.239.3927
chad.thompson@alston.com

Diego Marquez
202.239.3003
diego.marquez@alston.com

Jason M. Waite
202.239.3455
jason.waite@alston.com

ALSTON & BIRD LLP

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2014

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213-576-1100
NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
SILICON VALLEY: 275 Middlefield Road ■ Suite 150 ■ Menlo Park, California, USA, 94025-4004 ■ 650-838-2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333