

Red Notice

A Monthly Update on Global Investigations and Prosecutions



JUNE 2013

INTRODUCTION

Welcome to the June 2013 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, a French energy giant agrees to one of the most expensive Foreign Corrupt Practices Act (FCPA) settlements in history, U.S. executives face charges for an alleged bribery conspiracy involving a Venezuelan official, and a major pharmaceutical firm faces new bribery allegations in China. In export control and sanctions enforcement news, a professional tennis association, an oil company and several companies involved in the petrochemical industry all get in hot water for doing business related to Iran; and a Chinese national pleads guilty for his attempt to export sensitive technology to China. In export law developments, the government loosens restrictions on the export of items to facilitate reconstruction efforts in Syria and defense articles to Lybia, issues a new General License authorizing exports of software and hardware to Iran for personal communications, and continues its export control reform initiative by proposing a revised definition of "defense services" and the removal of satellites and related articles on the U.S. Munitions List (USML).

Thank you as always for reading *Red Notice*.

ANTI-CORRUPTION DEVELOPMENTS

European Oil and Gas Giant Pays Nearly \$400 Million to Settle Bribery Charges in the United States

In late May 2013, French oil and gas giant Total SA ("Total") agreed to pay USD \$398 million to settle charges that it bribed an official in Iran as part of a scheme to obtain oil and gas concessions from the Iranian government. The U.S. investigations led by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) found that Total paid USD \$60 million in bribes to intermediaries of Iranian officials in order to win the rights to develop oil and gas fields in Iran. Total purportedly hid the bribes by logging the payments as "business development expenses" or through sham consulting agreements. According to the SEC, these bribes won Total more than \$150 million in profits. The DOJ charged Total with three counts of violating the FCPA (one count each for violating the law's books and records provision and the internal controls provision; and one count of conspiring to violate the anti-bribery provision), but entered into a deferred prosecution agreement with the company, agreeing not to prosecute Total for a three-year period. The agreement also stipulates that Total must cooperate with U.S. and international law enforcement authorities, implement enhanced controls to avoid future violations of the FCPA, and pay a USD \$245.2 million fine. Total's settlement of the SEC's parallel investigation requires the company to pay back USD \$153 million in profits and hire an outside consultant to assist the company in enhancing its FCPA compliance program. Total's combined USD \$398 million settlement with U.S. authorities is the fourth largest FCPA settlement in history, only USD \$2 million less than the third largest settlement, which was paid by BAE (UK) in 2010. Although Total's costly settlements with the DOJ and SEC already rank among the largest ever, Total may face additional liability in its home country, where prosecutors from France's Tribunal de Grande Instance de Paris announced in late May 2013 that they were also recommending charges against Total for violations of French law stemming from the Iranian bribes. Read the [SEC release](#), [DOJ release](#) and continuing [coverage](#) at *Corporate Crime Reporter*.

U.S. Financial Services Executives Accused of Kickback Scheme Involving Venezuelan Bank Official

In early June 2013, the managing partner of a U.S.-based broker was arrested and charged in federal court with leading a conspiracy to bribe a senior official in Venezuela's state-owned economic development bank. According to the DOJ,

Ernesto Lujan, managing partner of Global Markets Group (GMG), and two of his employees conspired to engage in a kickback scheme with Maria De Los Angeles Gonzalez De Hernandez, an overseas trading manager at Banco de Desarrollo Economico Social De Venezuela (BANDES). Lujan and GMG purportedly gained over USD \$60 million in

SECURITIES AND EXCHANGE COMMISSION (SEC). Lujan and GMG perpetually gained over USD \$90 million in trades with BANDES as a result of their scheme with Gonzalez and arranged to split the commissions from these trades with Gonzalez. GMG personnel paid Gonzalez using an elaborate scheme of transfers between intermediary corporations and offshore accounts. Allegedly, USD \$9.5 million was transferred from GMG to a Swiss account held by a GMG employee. The employee subsequently transferred USD \$6.5 million to Lujan's Swiss account, who then allegedly transferred at least USD \$1.5 million to Gonzalez. Lujan is charged with violations of the FCPA, the Travel Act and anti-money laundering laws; two other GMG employees and Gonzalez were charged with related offenses in early May. The DOJ also instituted civil forfeiture actions against several bank accounts, including accounts located in New York and Switzerland, and several Florida properties tied to the scheme. Read the DOJ [release](#) and [coverage](#) by *The Wall Street Journal* (WSJ).

New GlaxoSmithKline Bribery Allegations Illustrate Risk for Pharma Firms in China

An anonymous tip in June 2013 launched an internal investigation into whether representatives of UK drug company GlaxoSmithKline PLC ("Glaxo") bribed doctors in China to prescribe its products, and, in some cases, to encourage doctors to prescribe Glaxo drugs for unauthorized treatments. China's healthcare system, while a significant growth market for the pharmaceutical industry, poses risks for companies subject to anti-bribery laws because of the country's state-control of its healthcare system and China's "tradition of government patronage and gift-giving," according to a *WSJ* report on the allegations. Glaxo is currently investigating the tip to assess whether the company violated the FCPA or other laws. Although it is unclear whether Glaxo is sharing information from this investigation with U.S. authorities, Glaxo disclosed last year that the DOJ and SEC continued to investigate its foreign business practices, and added recently that it cooperates with "regulators and enforcement authorities on a regular and ongoing basis." According to the *WSJ* report, Glaxo is suspected of giving improper cash payments (including "speaking fees") and gifts (including all-expenses-paid trips and dinners) to doctors and health officials in China between 2004 and 2010. The company denies the allegations, saying that its officials have investigated "each and every claim from this single, anonymous source and have no evidence of corruption or bribery" in its China business. Read *WSJ's* [report](#) on the allegations.

EXPORT CONTROLS AND SANCTIONS ENFORCEMENT

Government Sanctions Various Companies for Doing Business Related to Iran

The departments of State and the Treasury took action against a number of companies on May 31, 2013 due to those companies' involvement in Iranian business. Ferland Company Limited ("Ferland"), a company based in Cyprus and Ukraine, was charged by the departments of State and the Treasury with assisting the National Iranian Tanker Company in a plan to avoid sanctions against Iran by selling Iranian crude oil through a third party. Among the sanctions imposed on Ferland are prohibitions against: receiving loans from U.S. financial institutions, foreign exchange or other financial transactions under U.S. jurisdiction, engaging in transactions involving property under U.S. jurisdiction or control, and acquiring U.S. visas for the company's corporate officers. This case marks the first instance the United States has invoked its authority to target those who help Iranian entities evade sanctions. In addition, the Department of State identified eight petrochemical companies as being controlled by the Iranian government, and also imposed sanctions on two separate companies, one from Iran and one from the United Arab Emirates, for knowingly acquiring petrochemical products from Iran. Read the Department of State [press statement](#), [press coverage](#) by *WSJ* and *The Globe and Mail*.

Professional Sports Association Settles with OFAC on Alleged Violations Involving Iran

Following allegations by the Office of Foreign Assets Control (OFAC) that it unlawfully made payments of a salary to a resident of Iran, the Association of Tennis Professionals (ATP), also known as ATP Tour, Inc., agreed to pay USD \$48,600 on June 12, 2013 to settle the civil liability for the alleged violations. According to OFAC, between 2007 and 2010, ATP Tour, Inc. made, approved or facilitated 18 salary payments to an Iranian resident in connection with his officiating of ATP tournaments, in violation of the Iranian Transactions Regulations. Eight of the 18 payments took place after OFAC issued a warning letter to the company. Nonetheless, OFAC considered the alleged violation to be non-egregious, reflected in the fact that the base penalty for the alleged violations was USD \$135,000. Read the Department of the Treasury [press release](#) and [coverage](#) at *Mr. Watchlist*.

Chinese Citizen Pleads Guilty to Charges of Attempted Export of Sensitive Defense Technology

On May 30, 2013, Chinese citizen Lisong Ma pled guilty in U.S. federal court to charges of attempting to export weapons-grade carbon fiber from the United States to China, in contravention of the International Emergency Economic Powers Act. The materials that Ma attempted to purchase and export are controlled for export by the U.S. Department of Commerce due to their specialized applications in both the defense and aerospace industries. The charges against Ma allege that he acted with knowledge of the regulations and with the deliberate intention of circumventing them. Ma has not yet been sentenced, but faces up to 20 years in prison, forfeiture and a fine of up to USD \$1 million. Read the Bureau of Industry and Security (BIS) [press release](#).

Construction and Aid Items Now Eligible for Export to Syria under BIS License

In a bid to aid the Syrian reconstruction effort, BIS announced June 12, 2013 a limited waiver of licensed exports of reconstruction-related items to Syria. The waiver is made consistent with Executive Order 13338 of May 11, 2004, according to which BIS may issue licenses on a limited basis for the export of certain items that may alleviate critical needs of the Syrian people and facilitate Syrian reconstruction. The regulations will be implemented shortly, though applications for licenses can be filed immediately. Read the [BIS press release](#).

U.S. Department of State Provides Guidance on Export of Defense Items to Libya

The Directorate of Defense Trade Controls (DDTC) of the U.S. Department of State outlined regulations regarding the sale of defense articles to Libya in a [press statement](#) on May 10, 2013. In furtherance of the government's aim of supporting a secure and responsible military in Libya, U.S. regulations, specifically the International Traffic in Arms Regulations, and international rules promulgated by the United Nations Security Council (UNSC) demarcate exceptions to the arms embargo on Libya, allowing certain exports of defense items to the country. Those wishing to export such items to Libya must submit a license application to the UNSC, detailing specific justification regarding how the export meets any of the itemized exceptions.

Department of the Treasury Issues New Regulations on Exports to Iran

In order to enhance the ability of the Iranian people to access communications technology, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury published Iranian General License D on May 30, 2013. This license authorizes the export or reexport, directly or indirectly, from the United States or by U.S. persons, wherever located, of certain services, software or hardware connected with personal communications. Such items or services include fee-based or free services like social networking, instant messaging, blogging, etc. and any hardware or software incident to the functioning of such services, so long as the export is not intended for the government of Iran. Read the [OFAC action](#) and the [Akin Gump client alert](#) on the subject.

State, Commerce Issue Proposed Rules Regarding Spacecraft Items Listed on the USML

In a pair of notices published on May 24, 2013 in furtherance of the president's export control reform initiative, the departments of Commerce and State announced proposed rules regarding changes to the classification of spacecraft systems and related items. Collectively, the proposed rules would transfer export licensing jurisdiction over certain satellites and related items currently controlled by the International Traffic in Arms Regulations (ITAR) and classified under Category XV (Spacecraft Systems and Related Articles) of the USML to the Commerce Control List (CCL) of the Export Administration Regulations (EAR). The revisions will include a more precise definition of what constitutes "defense service." Read the Department of Commerce [proposed rule](#) and the Department of State [proposed rule](#). Read an [overview](#) of the administration's ongoing export control reform initiative.

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