

Akin Gump

STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



JULY/AUGUST 2013

INTRODUCTION

Welcome to the July/August 2013 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, the UK's Serious Fraud Office files its first Bribery Act charges; a U.S. teller machine manufacturer agrees to a large settlement related to allegations it bribed officials in Russia; the U.S. Department of Justice reveals new developments in its actions against executives at a French power giant; and one of the world's most famous brewers is investigated for its practices in India.

In export control and sanctions enforcement news, a microelectronics producer settles allegations of violations of the Arms Export Control Act and the International Traffic in Arms Regulations; a travel agency reaches a settlement regarding apparent violations of the Cuban Assets Control Regulations; the Office of Foreign Assets Control issues a rare "Finding of Violation" against a credit card company; two additional Chinese companies are cleared by the Bureau of Industry and Security to serve as validated end-users in China; a Chinese national pleads guilty to the attempted export of aerospace-grade carbon fiber; and two Chicago men are charged with attempting to influence U.S. policy makers to lift sanctions against Zimbabwe's president. Finally, developments in export control and sanctions law over the summer include the implementation of a limited waiver for exports to Syria; amendments to defense trade policy towards Libya; and export control reform regarding a variety of military items.

Thank you as always for reading *Red Notice*.

ANTI-CORRUPTION DEVELOPMENTS

UK's Serious Fraud Office Files First Bribery Act Charges

In mid-August 2013, the UK's Serious Fraud Office (SFO) announced its first charges under the Bribery Act 2010, the UK law combating corruption, including foreign bribery. The SFO, which is responsible for the prosecution of overseas corruption under the Bribery Act 2010, charged two executives of Sustainable AgroEnergy Plc and a financial advisor connected with a biofuel investment promoter with "making and accepting a financial advantage." The SFO alleges that the offenses took place between April 2011 and February 2012 and involved a fraud scheme worth GB £23 million. Read the SFO's [release](#) and [coverage](#) at *FT Adviser*.

ATM Manufacturer to Pay Nearly USD 50 Million to Settle Allegations of Bribery in Russia

In early August 2013, Diebold Inc. ("Diebold"), the largest manufacturer of automated teller machines (ATMs) in the United States, reportedly reached an agreement with the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) to pay USD 48 million to settle allegations that it violated the Foreign Corrupt Practices Act (FCPA). Diebold revealed in 2010 that it was investigating potentially improper payments made by one of its subsidiaries to government officials in Russia. Later in 2010, Diebold fired the leadership at its Russian subsidiary. As part of the agreement with the DOJ and SEC, Diebold will appoint an independent compliance monitor who will evaluate the company's anti-bribery systems for a minimum period of 18

independent compliance monitor who will evaluate the company's anti-bribery systems for a minimum period of 10 months. Read [more](#) at *The Wall Street Journal*.

Executive at French Power and Rail Firm Indicted on Bribery Charges in the United States

In late July 2013, a former senior executive at Alstom S.A., ("Alstom") France's power generation and transport giant, pled guilty to charges that he paid bribes to officials in Indonesia to secure business from the country's state-owned and -controlled electricity company. Frederic Pierucci pled guilty to one count of violating the Foreign Corrupt Practices Act (FCPA) and an additional count of conspiring to violate the FCPA (United States v. Pierucci et al., No. 12-CR-00238-JBA (D. Conn.)). The U.S. Department of Justice (DOJ) also announced that Lawrence Hoskins, a former senior vice president at Alstom, faces charges that he violated the FCPA, conspired to violate the FCPA, laundered money and conspired to commit money laundering. According to the DOJ, Pierucci, Hoskins and two executives at a U.S.-based Alstom subsidiary paid a member of Indonesia's parliament and high-ranking members of the Perusahaan Listrik Negara (PLN), the state-owned and -controlled power company, to win a USD 118 million contract. The bribes were allegedly concealed by pass-through payments using two outside consultants; the charged executives purportedly sought the assistance of a second consultant after the first consultant retained by the defendants failed to effectively bribe the PLN officials. The two executives at Alstom's U.S.-based subsidiary, William Pomponi and David Rothschild, were also charged in the scheme; Rothschild pled guilty late last year. Pierucci faces up to ten years in prison and upwards of USD 350,000 in fines, while Hoskins faces up to 50 years and upwards of USD 1.35 million in fines. Read the DOJ [release](#) and [coverage](#) of the charges at *FCPABlog*.

International Brewing Company Faces Bribery Probe Over India Business

Multinational beverage company Anheuser-Busch InBev ("AB InBev") revealed early in 2013 that the U.S. Securities and Exchange Commission (SEC) was investigating its compliance with the Foreign Corrupt Practices Act (FCPA) in its India-based business, and, in early August 2013, AB InBev indicated that the U.S. Department of Justice (DOJ) had joined the probe. The investigation is believed to center around AB InBev and New Delhi-based RJ Corp's joint venture, InBev Indian International Private Ltd., although AB InBev has only generally acknowledged that the probe inquires into "certain relationships of agents and employees." AB InBev follows in the steps of U.S. distiller Beam Inc. ("Beam") and UK-based Diageo Plc ("Diageo") as the latest multinational beverage company to reveal an investigation related to bribery in India. In late 2012, Beam revealed an ongoing investigation into its India business, reportedly involving potential FCPA violations. In 2011, Diageo paid more than USD 16 million to resolve allegations that it bribed government officials in India, South Korea and Thailand; Diageo's subsidiaries allegedly paid more than USD 1.7 million to government officials in India who were responsible for buying or authorizing the sale of the company's products. The DOJ's probe of AB InBev comes on the heels of the company's resolution of a DOJ antitrust suit in April seeking to block the company's purchase of Grupo Modelo SAB de CV ("Modelo"). The settlement of that case required AB InBev to sell off Modelo's entire U.S. operation. Read [more](#) about AB InBev's India investigation at *Law360*.

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Test and Measurement Equipment Manufacturer Settles Allegations of Export Violations

The U.S. Department of State and microelectronics producer Aeroflex, Inc. ("Aeroflex") entered into a Consent Agreement on August 12, 2013 for payment of civil penalties by Aeroflex of USD 8 million following claims by the government that Aeroflex had violated the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). Aeroflex also agreed to appoint an Internal Special Compliance Officer and conduct two audits of its compliance programs during the two-year term of the Consent Agreement. The Department of State alleged that, between 1999 and 2009, the company improperly exported or re-exported microelectronics and electronics equipment to China, Argentina, Japan, Turkey and India, among other countries. The sensitive equipment—including radiation-hardened microelectronics products—can be used in satellites. The unauthorized exports occurred due to Aeroflex's endemic failure to assess appropriate export control jurisdiction of the materials, as well as inadequate corporate oversight. Aeroflex cooperated with the U.S. Department of State during its review. Read the Directorate of Defense Trade Controls (DDTC) [consent agreement](#) and [press coverage](#) by *Law360*.

U.S. Citizens Charged With Attempting to Have Sanctions Lifted Against Zimbabwe's President

Two Chicago men were charged with violating U.S. sanctions by illegally attempting to influence U.S. policy

makers to lift sanctions against Zimbabwe President Robert Mugabe. Between 2008 and 2009, the two agreed to assist Mugabe and others in exchange for payment of USD 3.4 million. The men, Prince Asiel Ben Israel and C. Gregory Turner, lobbied at the state and federal level, including arranging for trips by officials to Zimbabwe and convening a pro-Mugabe forum in Washington, D.C. In addition, the individuals met multiple times with Zimbabwean officials, including Mugabe himself. Though U.S. sanctions do not prohibit public officials from meeting with sanctioned individuals and travel to a sanctioned country, the sanctions do ban anyone from lobbying on behalf of sanctioned individuals. Should Ben Israel and Turner be convicted, each could face a USD 1 million fine, as well as a 20 year prison sentence. Read the U.S. Department of Justice [press release](#) and [coverage](#) by *The Wall Street Journal*.

Bureau of Industry and Security Clears More Firms to Export High-Tech Products to China

On July 10, 2013, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) added two companies—Advanced Micro-Fabrication Equipment Inc. China and Samsung China Semiconductor Co. Ltd.—to its list of mainland Chinese entities that are eligible to receive U.S. exports, re-exports and transfers of certain controlled goods and technology under the validated end-user (VEU) program. As a result of this action by BIS, U.S. exporters may now export directly to either of these companies without first obtaining an individual export license for items classified under specific Export Control Classification Numbers. With the addition of Samsung China Semiconductor Co. Ltd. and Advanced Micro-Fabrication Equipment Inc. China, there are now 11 authorized companies and 36 eligible facilities under the VEU program for mainland China. Read the *Federal Register* [notice](#) and [press coverage](#).

Office of Foreign Assets Control Issues "Finding of Violation" Against Credit Card Company

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury issued a rare "Finding of Violation" against VISA International Service Association ("VISA") on August 13, 2013 for the company's violations of the Reporting, Procedures and Penalties Regulations (the "RPPR"). A "Finding of Violation" does not come with a monetary fine, but instead is a public "slap on the wrist" intended to compel future compliance with OFAC reporting obligations. VISA reportedly violated the RPPR on three occasions between November 2007 and September 2011 by failing to timely file with OFAC reports of blocked property. OFAC issued the "Finding of Violation", rather than a civil penalty, in part because no economic benefit accrued to the sanctioned parties as a result of VISA's violations. Read the OFAC [enforcement action](#).

Travel Agency Settles for Apparent Violations of Cuban Assets Control Regulations

American Express Travel Related Services Company, Inc. ("AmEx Travel") reached a settlement with the Office of Foreign Assets Control (OFAC) on July 22, 2013 for payment of over USD 5 million regarding the company's apparent violations of the Cuban Assets Control Regulations (CACR). The base penalty for the apparent violations is approximately USD 3.5 million. The incidents resulting in AmEx Travel's voluntary self-disclosure to OFAC occurred between December 2005 to November 2011, with AmEx Travel issuing almost 15,000 tickets to passengers traveling between Cuba and countries other than the United States. The substantial penalty reflected a number of aggravating circumstances cited by OFAC, including the fact that AmEx Travel had previously been investigated by OFAC in 1995 and 1996 for similar violations. Read the OFAC [enforcement action](#) and [press coverage](#) from *The Wall Street Journal*.

Attempted Export to China of Carbon Fiber Leads to Guilty Plea by Chinese Nationals

On August 19, 2013, a Chinese national, Ming Suan Zhang, pled guilty to violations of the International Emergency Economic Powers (IEEP) Act for attempting to export large amounts of aerospace-grade carbon fiber to China from the United States. The specialized carbon fiber is often used in the aerospace, defense and military industries and is tightly controlled for export by the U.S. Department of Commerce. Zhang was targeted in a sting operation by federal authorities after two of his accomplices attempted, over the Internet, to locate significant quantities of the specialized carbon fiber. In conversations with an undercover officer, Zhang indicated he was seeking the carbon fiber to export to the Chinese military. Zhang was arrested at his subsequent meeting with the officer, at which he believed he would take possession of the carbon fiber. He will be sentenced on November 15, 2013, and faces up to a USD 1 million fine and 20 years in prison. Read the BIS [press release](#) and [coverage](#) by *The New York Times*.

Bureau of Industry and Security Publishes Final Rule Regarding Exports to Syria

Following its announcement of a limited waiver of licensed exports of reconstruction-related items to Syria on June 12, 2013, the Bureau of Industry and Security (BIS) on July 23, 2013 published a final rule implementing the waiver. As previously reported [here](#), the waiver permits BIS to issue licenses on a case-by-case basis for the export of certain items, such as technology and software, which may alleviate critical needs of the Syrian people and facilitate Syrian reconstruction. To implement the waiver, BIS has amended the Export Control Regulations (EAR) Syria licensing policy. Read the [final rule](#) as published in the *Federal Register*.

Directorate of Defense Trade Controls Amends Regulations on Defense Policy on Libya

The Directorate of Defense Trade Controls (DDTC) of the U.S. Department of State published a final rule on August 5, 2013, amending the International Traffic in Arms Regulations (ITAR) with respect to the sale of defense articles to Libya. The amendment brings the ITAR in line with the resolution adopted earlier this year by the United Nations Security Council regarding defense policy for the war-torn state. As a result of the amendment, exporters are no longer required to notify the Committee of the Security Council concerning Libya (the "Committee") of exports to the country of non-deadly military equipment, and individuals are no longer required to inform the Committee of the provision of assistance or training to the Libyan government regarding disarmament or state security. Read the [final rule](#) as published in the *Federal Register* and the updated [ITAR Part 126.1\(k\)](#).

July Sees Onslaught of Changes to Export Regulations Regarding Military Items

The U.S. Departments of State and Commerce were active in July 2013, publishing multiple final rules regarding reclassifications of items under the Commerce Control List (CCL) of the Export Administration Regulations (EAR) and U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR).

On July 8th, the U.S. Department of State published two final rules. One of the rules exempts Canadian firearms components worth less than USD 500 from licensing for export to Canada under the ITAR. This rule also removed the restriction that such exports be only for personal use.

The other U.S. Department of State final rule published on July 8th amended the ITAR by further clarifying the distinction between a number of items on the USML and similar items on the CCL. The categories of the USML that are revised via this amendment are: Category VI (Surface Vessels of War and Special Naval Equipment); Category VII (Ground Vehicles); Category XIII (Materials and Miscellaneous Articles); and Category XX (Submersible Vehicles and Related Articles). The revision of Category VI makes more specific the types of navy equipment surface war vessels that are controlled by USML Category VI, so that the items listed therein are only those required to be controlled under the Arms Export Control Act (AECA). Likewise, the final rule amended the ITAR so that the items listed under USML Category VII are limited to those deemed necessary by the AECA. The revision of Category XIII also seeks to draw a clearer line between articles controlled by the CCL and those controlled by the USML; specifically, diving apparatus and embrittling agents will now come under the aegis of the CCL, rather than the USML. Finally, the final rule makes revisions to USML Category XX, reclassifying certain submarines formerly listed under Category VI to Category XX, and consolidating the controls regarding submersibles.

The Bureau of Industry and Security (BIS) of the U.S. Department of Commerce published a final rule as well in July. On July 16th, BIS issued its final rule amending the EAR with changes to the Missile Technology Control Regime (MTCR) Annex. Via this rule, six export control classification numbers (ECCNs) related to missiles and missile technology and equipment have been revised. Read the [final rule](#) regarding Canadian firearms components, the [final rule](#) regarding military vehicles and other vessels of war, and the [final rule](#) regarding the MTCR Annex, as published in the *Federal Register*.

CONTACT INFORMATION

For more information about the stories highlighted in *Red Notice*, please contact:

[Edward L. Rubinoff](#) at 202.887.4026 or erubinoff@akingump.com or [Nicole H. Sprinzen](#) at 202.887.4301 or nsprinzen@akingump.com.

Contact information for attorneys in related practices can be found [here](#).

The "Anti-Corruption Developments" section of *Red Notice* is edited by [Jacob Weixler](#). *Red Notice* is a monthly publication of Akin Gump Strauss Hauer & Feld LLP.

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