

**Akin Gump**

STRAUSS HAUER & FELD LLP

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



**SEPTEMBER 2013**

## INTRODUCTION

**Welcome** to the September 2013 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, several U.S. financial executives plead guilty in a South American bribery scheme; the health industry encounters more scrutiny in China; and a South African mining company reveals a U.S. Securities and Exchange Commission investigation into a payment to its country's economic empowerment fund.

In export control and sanctions enforcement news, a national aerospace company reaches a USD 25 million settlement with the U.S. Department of State and the U.S. Department of the Treasury blacklists a number of individuals and corporations for their efforts to help Iran circumvent anti-Iranian sanctions.

Finally, developments in export control and sanctions law include long-awaited changes to export rules on brokering; an addition to the Bureau of Industry and Security's list of Validated End Users in China; implementation of the revised U.S. Munitions List Categories VIII and XIX, as well as the opening to public comment of the proposed revision to Category XI; and the issuance by the Office of Foreign Assets Control of general licenses for certain exports to Iran.

If you would like to read this month's edition in Chinese, please click [here](#). If you would like to read this month's edition in Russian, please click [here](#).

Thank you as always for reading *Red Notice*.

## ANTICORRUPTION DEVELOPMENTS

### **U.S. Financial Executives Plead Guilty to Kickback Scheme with South American Bank Official**

In late August 2013, the managing partner of New York-based Direct Access Partners LLC (DAP) and two of its employees each pled guilty to seven counts connected to a scheme to bribe officials at Venezuelan state-owned economic development banks. Ernesto Lujan (DAP's managing partner), Jose Alejandro Hurtado and Tomas Alberto Clarke Bethancourt were charged earlier this year with six counts—conspiracy and substantive money laundering, Travel Act and Foreign Corrupt Practices Act counts—for a bribery scheme involving Maria De Los Angeles Gonzalez De Hernandez, an overseas trading manager at Banco de Desarrollo Economico Social De Venezuela ("BANDES"). DAP purportedly gained over USD 60 million in trades as a result of bribing Gonzalez. The men also pled guilty to charges that they conspired to bribe another unnamed official at Banfoandes, a separate Venezuelan development bank with foreign investments through DAP. Lujan, Hurtado and Clarke face up to five years in prison for each conspiracy and substantive count, as well as up to 20 years for each count of money laundering. Read the U.S. Department of Justice's [release](#) and [coverage](#) at *Law360*.

**Another European Health Company Accused of Corruption in China**

### Another European Health Company Accused of Corruption in China

The growing trend of corruption allegations against health and pharmaceutical industry companies in China continues this month as France's Groupe Danone S.A. ("Danone") faces a report that a unit of the company bribed healthcare providers to increase sales of its products. Danone's baby food brand, Dumex Baby Food Co. ("Dumex"), was cited last week by a Chinese television report for allegedly paying doctors and nurses to promote its baby formula. The report accused Dumex of paying "sponsorship fees" as high as CNY ¥10,000 (approximately USD 1,600) to healthcare professionals. Dumex is investigating the claims and will release a report later this month. Danone is not alone in facing accusations of corrupt practices in China. Most notably, UK pharmaceuticals giant GlaxoSmithKline continues to address allegations that it made illegal payments to doctors in China, while France's Sanofi S.A. and U.S.-based Eli Lilly and Company have also faced corruption accusations by reports in the Chinese media and investigations by Chinese authorities. Read the [coverage](#) of the Danone allegations at the *BBC*.

### U.S. Authorities Investigate African Mining Co. Deal with Empowerment Fund

Earlier in September 2013, a mining company acknowledged that the U.S. Securities and Exchange Commission (SEC) is investigating a large payment the company made to a fund sponsored by the South African government. Gold Fields Ltd. ("Gold Fields"), a South African gold mining firm listed on the New York Stock Exchange, granted South Africa's black economic empowerment (BEE) fund a stake in the company's operation equivalent to ZAR R2.1 billion (approximately USD 213 million). Gold Fields gave BEE a 9% share of its South Deep mine. BEE was created in the mid-1990's to resolve the race-based economic imbalances created by apartheid but has been criticized for purportedly failing to share its proceeds with the poor. According to reports, a Gold Fields internal investigation found that the company "hugely increased" the "cut" of Baleka Mbete, chairperson of the African National Congress, South Africa's ruling party and a proponent of BEE. This increase may be linked to Gold Field's successful but contentious 2010 bid to obtain a new license to operate its South Deep mine, South Africa's *Mail & Guardian* reported. Read the [coverage](#) of the SEC investigation at *The Wall Street Journal* and [coverage](#) of Gold Fields internal investigation at the *Mail & Guardian*.

## EXPORT CONTROL AND SANCTIONS ENFORCEMENT

### Treasury Blacklists Six Who Allegedly Evaded Iran Oil Sanctions

On September 13, 2013, the U.S. Department of the Treasury blacklisted six individuals and four businesses for their alleged efforts to help Iran evade sanctions to export oil. The individuals, five of whom are Iranian nationals and one of whom is an Iranian-born British citizen, sought to assist Iran in various ways. One Iranian national, Seyed Seyyedi, as director of Sima General Trading, established a network of front companies to help Iranian oil companies circumvent sanctions. The other five individuals, who work for either the National Iranian Oil Company (NIOC) or NIOC-related firms, were allegedly working directly with the government in Tehran in seeking to evade the sanctions. Read the U.S. Department of the Treasury [press release](#) and [press coverage](#) by *The Wall Street Journal*.

### Aerospace Products Manufacturer Settles Allegations of ITAR and AECA Violations

Meggitt-USA, Inc. (Meggitt), a leading American producer of aerospace products and parts, agreed to a USD 25 million settlement with the U.S. Department of State on August 23, 2013 to resolve allegations that the company engaged in illegal acts, such as the unauthorized export of aerospace products, in violation of both the International Traffic in Arms Regulations (ITAR) and the Arms Export Controls Act (AECA). From the mid-1990s onward, Meggitt group subsidiaries made multiple disclosures of hundreds of apparent ITAR violations involving unlawful provision of defense services, illegal exports of defense articles and failure to keep adequate records of ITAR-controlled transactions. Under Meggitt's 30-month consent agreement with the U.S. Department of State, the company will pay USD 3 million of the civil penalty in installments, with another USD 22 million civil penalty suspended on the condition that Meggitt undertakes Department-approved remedial measures. Meggitt disclosed almost all of its alleged violations and cooperated fully with the U.S. Department of State and the Office of Defense Trade Controls Compliance during the government investigation. Read the U.S. Department of State [media note](#), the U.S. Directorate of Defense Trade Controls [consent agreement and related documents](#) and *Law360* [press coverage](#).

## EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

## Bureau of Industry and Security Updates List of Validated End-Users in China

The Bureau of Industry and Security (BIS) on September 6, 2013 published a notice adding another company to the list of validated end-users (VEUs) in the People's Republic of China. Intel Semiconductor (Dalian) Co., Ltd. ("Intel Dalian"), a subsidiary of Intel Corporation, was named as a new VEU. As such, the company may now receive exports, reexports and in-country transfers of eligible export-controlled items under general authorization rather than specific license. Read the *Federal Register* [notice](#).

## U.S. Department of State Issues Interim Final Rule Regarding Brokers and Brokering Activities

House On August 26, 2013, the U.S. Department of State amended the International Traffic in Arms Regulations (ITAR) regarding the registration and licensing of brokers, brokering activities and related provisions via publication of a long-awaited [interim final rule](#) in the *Federal Register*. The rule will be effective on October 25, 2013, and the U.S. Department of State will accept comments on the interim final rule until October 10, 2013. The proposed amendments to the ITAR will revise ITAR part 129 and related sections that affect brokers and brokering activities, and will also implement the brokering amendment to the Arms Export Control Act. The changes clarify registration requirements; narrow the definition of "brokering activities"; limit the extraterritorial application of the brokering provisions of the ITAR; and specify the items that require prior approval during brokering activities, among other minor changes and clarifications. Read *Law360* [coverage](#).

## DDTC Starts Reviewing New Commodity Jurisdiction Requests Under Revised USML Categories VIII and XIX; Public Comments Available on Proposed Revision to USML Category XI

Pursuant to amendments previously summarized [here](#) and [here](#), the U.S. Directorate of Defense Trade Controls (DDTC) on September 1, 2013, began reviewing commodity jurisdiction requests under the amended U.S. Munitions List (USML) Categories VII (aircraft and related articles) and XIX (gas turbine engines and associated equipment). This change, however, is effective only for newly submitted requests, and not for requests that have already been submitted and are under review. The amendments reflect revised categories of the USML adopted under the Export Control Reform initiative. Read the DDTC [industry notice](#). In addition, on September 13, 2013, DDTC made available public comments that have been received to date on the proposed revision to USML Category XI. Read the [comments](#).

## OFAC Issues General Licenses Regarding Humanitarian and Sports Activities in Iran

In its continued efforts to ease access to humanitarian aid and to encourage sports exchanges, the Office of Foreign Assets Control (OFAC) of the U.S. Treasury on September 10, 2013 issued two general licenses authorizing the provision of human rights efforts, health services, wildlife conservation activities and disaster relief in Iran, as well as the provision of activities related to sports and other activities. The licenses were issued pursuant to the Iranian Transactions and Sanctions Regulations. Read the OFAC [press release](#) and [press coverage](#) by *The Wall Street Journal*.

## 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](mailto:erubinoff@akingump.com) or Nicole H. Sprinzen at 202.887.4301 or [nsprinzen@akingump.com](mailto:nsprinzen@akingump.com).

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

The "Anticorruption Developments" section of *Red Notice* is edited by \_\_\_\_\_ publication of Akin Gump Strauss Hauer & Feld LLP.

. *Red Notice* is a monthly

© 2013 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

If you would like to update your information or opt out from our mailing list, please [click here](#). If you would like to update your preferences, please [click here](#). To forward to a friend, please [click here](#).