

Akin Gump

STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



JANUARY 2014

Introduction

Welcome to the January 2014 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, Foreign Corrupt Practices Act (FCPA) settlements for two major U.S. companies and their subsidiaries top USD 400 million as Alcoa Inc. (“Alcoa”) and Archer Daniels Midland Company (ADM) reach agreements with U.S. authorities; a German engineering firm agrees to pay over USD 30 million for its dealings in Nigeria; and international accounting firm KPMG Accountants N.V. (“KPMG”) reaches an agreement with Dutch authorities to settle allegations that it assisted in hiding suspicious payments in the middle east.

In export control and sanctions enforcement news, a Turkish company faces a temporary export ban for its attempted export of U.S.-origin aircraft engines to Iran; a Pennsylvania-based electronics manufacturer agrees to a suspended settlement with the Department of Commerce for its alleged unlicensed export of almost USD 3 million worth of amplifiers; a number of banks reached settlements with the U.S. government regarding their apparent violations of the export sanctions regulations; a Chinese national will spend five years in jail for the attempted illegal export of aerospace-grade carbon fiber; a former partner of Russian arms dealer Viktor Bout is convicted of conspiracy to buy aircraft, in violation of U.S. sanctions; a Belarusian arms smuggler is convicted for violations of the Arms Export Control Act (AECA); and the Bureau of Industry and Security (BIS) adds thirty-six entities to, and removes one entity from, its Entity List.

In developments in export control and sanctions law, the Directorate of Defense Trade Controls (DDTC) clarifies the requirements regarding reporting political and other financial contributions, as well as further amends the U.S. Munitions List (USML), as part of the administration’s ongoing export reform efforts.

Additionally, Akin Gump welcomed new partner Aaron Murphy, a renowned expert on the FCPA, who joins Akin Gump’s San Francisco office. Murphy’s practice focuses on FCPA compliance counseling and investigations for large and midsize companies. He is also the author of the book *Foreign Corrupt Practices Act: A Practical Resource for Managers and Executives*. Click [here](#) to view Mr. Murphy’s full biography.

TRANSLATIONS

中文 >

НА РУССКОМ ЯЗЫКЕ >

SPEAKING ENGAGEMENTS

In December 2013, Akin Gump partners Stephen Mansfield and Robert Humphreys gave a presentation, “Federal Enforcement & the Foreign Corrupt Practices Act”, at Akin Gump’s downtown Los Angeles office.

If you would like to invite Akin Gump Strauss Hauer & Feld LLP lawyers to speak at your company or to your group about anticorruption law, compliance, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

ANTICORRUPTION DEVELOPMENTS

U.S. Aluminum Producer and Sales Subsidiary Pay Over USD 380 Million to Settle FCPA Charges

In early January 2014, Alcoa World Alumina LLC agreed to plead guilty to one count of violating the FCPA, while its parent company and majority owner, U.S. aluminum producer Alcoa, Inc., settled a Securities and Exchange Commission (SEC) enforcement action, which resulted in criminal fines and forfeitures of approximately USD 384 million. Department of Justice (DOJ) and SEC actions relate to the companies' scheme to pay millions of dollars in kickbacks to the Bahraini government and members of Bahrain's royal family to retain business. According to the DOJ, Alcoa Australia had a long-term alumina supply agreement with Aluminum Bahrain B.S.C. ("Alba"), under which Alcoa Australia agreed to supply alumina to Alba using offshore shell companies held by a London-based middleman. Alba, an alumina smelter controlled by the Bahraini government, insisted that Alcoa Australia hire the consultant to act as a "sales agent" for the agreement. From 2005 to 2009, the sales agent sold alumina to Alba at a significant mark-up, which garnered over USD 188 million, and used the profits from the marked-up transactions to provide kickbacks to Bahraini government officials. Alcoa World Alumina LLC, which is majority-owned and controlled by Alcoa, agreed to pay a criminal fine of USD 209 million and USD 14 million forfeiture, while parent company Alcoa agreed to pay to the SEC USD 161 million in disgorgement. Additionally, Alcoa agreed to enhance its global anticorruption compliance program, and both entities promised to cooperate with the DOJ's further pending investigations related to this scheme. Read the [DOJ release](#), the [SEC release](#) and [coverage](#) at *Forbes*.

U.S. Food Giant and Its Ukraine Subsidiary Agree to Pay Over USD 50 Million for FCPA Violations

In late December 2013, Alfred C. Toepfer International Ukraine Ltd. ("ACTI Ukraine"), a subsidiary of U.S. food giant ADM, pled guilty to one count of conspiracy to violate the FCPA, settled an SEC FCPA enforcement action and agreed to pay a combined settlement of over USD 54 million in penalties and disgorgement. According to the DOJ, ACTI Ukraine and a second ADM subsidiary, Alfred C. Toepfer International GmbH ("ACTI Hamburg"), bribed Ukrainian government officials to obtain nearly USD 41 million in value added tax refunds. To settle the DOJ's charges, ACTI Ukraine agreed to pay USD 17.8 million in criminal fines, and its parent company, ADM, agreed to a non-prosecution agreement that requires ADM to remedy past failures and to implement and maintain internal controls. ADM's settlement with the SEC requires the company to pay USD 36.5 million in disgorgement and prejudgment interest, which, combined with the DOJ settlement, means that ADM and its subsidiary will pay approximately USD 54.3 million in total. The SEC and DOJ acknowledged ADM's cooperation with the investigation, including its efforts in "conducting a world-wide risk assessment and corresponding global internal investigation, voluntarily making current and former employees available for interviews, and compiling relevant documents." Read the [DOJ release](#), the [SEC release](#) and [coverage](#) at *Compliance Week*.

German Engineering Company to Pay USD 32 Million for

Alleged FCPA Violations

Bilfinger SE (“Bilfinger”), a Germany-based engineering and services company, reached a settlement of USD 32 million with the DOJ in early December 2013 related to allegations that it violated the FCPA by bribing Nigerian officials in an effort to obtain a USD 387 million natural gas pipeline contract. The DOJ alleged that Bilfinger and its joint venture partner, Houston-based construction and engineering contractor Willbros Group Inc. (“Willbros”), conspired to pay more than USD 6 million to officials in Nigeria to secure contracts related to the Eastern Gas Gathering System Project. Bilfinger and Willbros allegedly inflated their costs by three percent to cover the cost of bribing the officials, and Bilfinger loaned USD 1 million to Willbros to cover its part of the bribes. As part of the settlement, Bilfinger entered into a deferred prosecution agreement with the DOJ, which requires the company to institute a system of “rigorous internal controls,” cooperate with the government’s ongoing investigation and retain an independent compliance monitor for at least 18 months. In 2008, Willbros reached a settlement with DOJ regarding this matter, which required Willbros to pay USD 22 million and to enter into a deferred prosecution agreement. In 2012, the DOJ successfully moved to dismiss the charges against Willbros based on the company’s satisfaction of its obligations under the agreement. Read the [DOJ press release](#) and [coverage](#) from *AllAfrica*.

Caribbean Oil Services Executives, Including General Counsel, Face FCPA Charges for Alleged Bribes in Colombia

In early January 2014, the DOJ charged two former chief executive officers of PetroTiger Ltd. (“PetroTiger”), a British Virgin Islands-based oil services company, for allegedly participating in a scheme to bribe government officials in Colombia, to defraud the company and to launder the criminal proceeds. The company’s general counsel was also charged in the scheme and pled guilty to bribery and fraud counts. The charges allege that the three named officials concocted and executed a plan to bribe a foreign official to secure an oil services contract in Colombia worth USD 39 million and purportedly employed the official’s wife as a consultant for PetroTiger. Ultimately, the executives made payments directly to the foreign official’s personal account when they were unable to wire the money to the consultant’s account. The DOJ reported that it has “worked closely” with its law enforcement counterparts in the Colombia and the Philippines in this matter. Read the [DOJ release](#) and [coverage](#) at *Corporate Crime Reporter*.

Dutch Accounting Firm Fined by Dutch Authorities for Disguising Suspicious Payments in Saudi Arabia

In late 2013, KPMG Accountants N.V. (“KPMG”) and Dutch authorities reached an agreement of EUR 7 million (approximately USD 9.5 million) for KPMG to settle charges that the accounting firm assisted its client, Netherlands-based construction company Ballast Nedam, in hiding payments made to agents in Saudi Arabia to obtain business. Dutch officials allege that KPMG allowed payments made to agents to remain hidden during audits and failed to investigate Ballast Nedam’s compliance with integrity and ethics requirements. In late 2012, Ballast Nedam agreed to pay Dutch prosecutors EUR 17.5 million to settle charges related to the Saudi bribery scheme and appointed a new compliance and risk officer. KPMG’s settlement with Dutch authorities includes EUR 3.5 million in forfeiture and EUR 3.5 million in penalties. Read [KPMG’s release](#) and [coverage](#) at *Compliance Week*.

BIS Issues Temporary Denial Order to Turkish Company for Re-Export of U.S.-Origin Aircraft Engines to Iran

On January 3, 2014, BIS issued a temporary denial order (TDO) against 3K Aviation Consulting & Logistics (“3K”), a Turkish company, and others, barring them from engaging in export transactions involving items subject to the Export Administration Regulations (EAR). BIS determined that the TDO was necessary to prevent an “imminent violation” of the EAR with respect to an intended re-export to Iran of two General Electric-brand aircraft engines. According to BIS, the engines in question had already been exported from the United States to Turkey, from which country 3K intended to re-export the items to Iran without the necessary U.S. government authorization. The ban is in effect for 180 days, but can be renewed upon request. Read the [BIS denial order](#) and [Law360 press coverage](#).

Electronics Manufacturer Reaches Suspended Settlement Agreement Regarding Its Unlicensed Export of Amplifiers

Amplifier Research Corp. (“Amplifier Research”) agreed to a suspended settlement of USD 500,000 with BIS on December 27, 2013, based on the company’s alleged 50 unlicensed exports of amplifiers classified under Export Control Classification Number (ECCN) 3A001 of the Commerce Control List (CCL) to a number of countries, including Russia, China, Singapore, Thailand, India, Malaysia and others. Amplifier Research allegedly exported almost USD 3 million worth of amplifiers from the United States without the appropriate licenses between January 2008 and June 2011, and voluntarily disclosed these actions to BIS. Per the suspended settlement, Amplifier Research will not have to pay the penalty so long as it does not commit further export control violations during the two year probationary period. In addition, the company must complete a thorough external audit of its export controls and compliance procedures by an unaffiliated third-party consultant. Read the [BIS settlement order](#) and [press coverage](#) from *Law360*.

Scottish Bank Agrees to USD 33 Million Settlement for Alleged Violations of U.S. Sanctions

On December 11, 2013, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury announced a settlement agreement of USD 33 million with the Royal Bank of Scotland plc (RBS) regarding its alleged violations of various U.S. sanctions programs. The OFAC settlement is part of a larger USD 100 million global settlement between RBS and OFAC, the Board of Governors of the Federal Reserve Board, and the New York State Department of Financial Services. The OFAC case involved apparent violations of the Iranian Transactions Regulations, the Sudanese Sanctions Regulations, the Burmese Sanctions Regulations and the Cuban Assets Control Regulations. OFAC alleged that the bank, in transmitting payment messages to U.S. financial institutions, removed material references to U.S.-sanctioned locations or persons. The removal of such references prevented the RBS payment system from flagging payments to barred institutions in Iran, Sudan, Burma and Cuba. As part of the settlement, RBS must establish policies and procedures to prevent the recurrence of such conduct. Read the [Department of the Treasury press release](#) and [BBC coverage](#).

Alabama Bank Pays Settlement of USD 19,125 for Alleged

Violations of the Sudanese Sanctions Regulations

Compass Bank, of Birmingham, Alabama, reached a settlement of a little over USD 19,000 with OFAC on December 3, 2013 for its alleged violations of the Sudanese Sanctions Regulations (SSR). OFAC alleged that, on February 10, 2011, Compass Bank initiated a wire transfer in the amount of almost USD 15,000 on behalf of an individual transferring money from the United Kingdom to Sudan. Executives at Compass Bank reviewed the transfer before it began and mistakenly deemed it to comply with the SSR because of their assumption that the basic purpose of the payment fell within the authorization granted by a general license and because none of the parties involved were on the List of Specially Designated Nationals and Blocked Persons. OFAC determined, however, that the transfer did not comply with the SSR. Although Compass Bank did not voluntarily disclose the violation, OFAC deemed the violation to be nonegregious and not the result of willful or reckless conduct, which lead OFAC to reduce the penalty from the base amount of USD 25,000. Read the [OFAC enforcement information](#) and [Law360 coverage](#).

Chinese National Sentenced to Almost Five Years in Prison for Attempted Illegal Export of Aerospace-Grade Carbon Fiber

On December 10, 2013, Chinese national Ming Suan Zhang was sentenced to 57 months in prison for violations of the International Emergency Economic Powers Act (IEEPA). Zhang had attempted to export thousands of pounds of high-grade carbon fiber, a controlled commodity, from the United States to China. The intended end-user in China is alleged to have been a Chinese military aircraft manufacturer. Certain types of carbon fiber, including the type Zhang had attempted to export, are controlled by the United States because they can be used to make ballistic missiles, aircraft and nuclear centrifuges, among other things. Read the [BIS press release](#) and [coverage](#) by *Bloomberg*.

36 Parties Added to Entity List for Actions Involving Illegal Shipments of Goods to Iran and China; One Party Removed

On December 12, 2013, BIS added 36 parties (both individuals and companies) to its Entity List due to their actions that undermined the national security and foreign policy interests of the United States. The parties on the newly released list are located across the world, and were identified following a BIS Office of Export Enforcement investigation of parties who engaged in actions involving illegal shipments of U.S. goods to prohibited end-users in China and Iran. In addition to the additions to the Entity List, one company, ECO-MED-SM Ltd., located in Russia, was removed from the list in response to a removal request. Read the [BIS press release](#).

U.S. Bank Settles Potential Civil Liability for Apparent Violations of the Global Terrorism Sanctions Regulations

With a fine of USD 32 million, HSBC Bank ("HSBC") settled with OFAC for three apparent violations of the Global Terrorism Sanctions Regulations (GTSR). The apparent violations arose from HSBC's authorization of payments originated by a Specially Designated Global Terrorist, despite the entity's existence on HSBC's interdiction software. Although the software flagged the transactions, further information regarding the originator was not processed by HSBC, and the transactions were approved. HSBC voluntarily disclosed the apparent violations to OFAC. Read the [OFAC enforcement action](#).

Former Partner of Viktor Bout Convicted of Conspiracy to Buy Aircraft in Violation of U.S. Sanctions

Richard Chichakli, a dual U.S.-Syrian citizen, was convicted on Friday, December 13, 2013 for his role in a conspiracy with jailed Russian arms dealer Victor Bout to buy aircraft, in violation of U.S. sanctions. By presidential executive order, Chichakli is banned from conducting any business with U.S. companies due to his connection with Bout, who has been called the “Merchant of Death” because of his leadership role in an international weapons smuggling ring. In 2007, Chichakli had attempted—via the use of a false identity—to purchase a number of Boeing company planes for Samar Air, a foreign firm that he and Bout co-manage. Chichakli, who was residing in Australia, was extradited to the United States in May 2013. Read [The Voice of Russia press coverage](#).

Belarusian Arms Smuggler Convicted for Violations of the Arms Export Control Act

Siarhei Baltutski, an international arms dealer from Belarus, was sentenced December 19, 2013 to 15 years in prison for conspiracy to violate the AECA, the IEEPA and conspiracy to commit money laundering. Baltutski plead guilty to the charges on January 25, 2013. The government charged that, between 2008 and 2011, Baltutski conspired to export and succeeded in exporting hundreds of high tech military technology items from the United States to Belarus, in violation of the AECA and the IEEPA. In addition, Baltutski arranged for payment for the items through secret wire, via offshore shell companies. Read the [DOJ press release](#) and [press coverage](#).

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

DDTC Clarifies ITAR Requirements Regarding Reporting Political and Other Contributions

On December 13, 2013, DDTC clarified the requirements under Part 130 of the International Traffic in Arms Regulations (ITAR) for reporting political contributions, commissions and fees in connection with the export of defense articles or services to international organizations or armed services of foreign nations. When applicants seek licenses for the commercial export of defense articles or services valued at USD 500,000 or more to such end-users, the applicants must report to the DDTC whether the recipients of such articles or services have agreed to make political contributions of USD 5,000 or more, or fees or commissions of USD 1000,000 or more. In addition, if previously exported goods or services to such end-users took place in the context of a political contribution totaling USD 2,500 or more or a fee or commission of more than USD 50,000, applicants must file a supplemental report including such information within 30 days of such a payment or offer to pay. Read the [DDTC guidelines](#).

DDTC Makes Further Changes to USML Categories

As part of the President’s Export Control Reform (ECR) Initiative, the U.S. departments of State and Commerce published final rules in the January 2, 2014 Federal Register that revise five more categories on the USML, establish corresponding 600 series entries in the Commerce Control List (CCL) to capture items transitioning off the USML, and provide other changes. The USML categories affected are: IV (Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines), V (Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their

Constituents), IX (Military Training Equipment, X (Personal Protective Equipment, and XVI (Nuclear Weapons Related Articles). The new rules will be effective July 1, 2014 to allow industry to transition to the new control standards. In the same Federal Register edition, the agencies also published clarifications and corrections to the final rules published on July 8, 2013, which became effective January 6, 2014, regarding the ECR revisions to USML Categories VI, VII, XII, XX: In addition, DDTC gave notice via the final rules of the addition of a definition for the terms "equipment," "submersible vessels," "surface vessels of war," and "organizational-level maintenance," "intermediate-level maintenance" and "depot-level maintenance". DDTC also notified readers of the continued implementation of the new licensing procedure applicable to the export of items that are subject to the Export Administration Regulations and that are exported together with defense articles, and of miscellaneous related changes to other sections of the International Traffic in Arms Regulations (ITAR). Read the January 2 Federal Register [Department of State notice](#) and [Department of Commerce notice](#).

Finally, in conjunction with these published revisions, DDTC issued an industry notice on January 6, 2014, announcing that all DTrade DSP forms, DS2032 and the Common Schema have been upgraded to accommodate the revisions to USML Categories VI, VII, XIII, and XX. Beginning January 6, 2014, DTrade users must use version 8.1 for the DSP-5, 6, 61, 62, and 74 and version 8.2 for the DSP-73 to submit license applications and amendment forms; registrants must use version 4.1 to submit the DS2032; and the Common Schema has been updated to version 7.1. Earlier versions of these forms and schema will automatically be rejected by the system. Should users have questions regarding the use of these new forms, they are advised to contact the DDTC Help Desk at 202.663.2838 or DTradeHelpDesk@state.gov.

CONTACT INFORMATION

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

The "Anticorruption Developments" section of *Red Notice* is edited by [Jacob Weixler](#).

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