

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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IN THIS ISSUE

Anticorruption Developments

- [DOJ and SEC Announce Settlement with PTC, Inc. in FCPA Case Involving SEC's First Individual DPA](#)
- [SAP and SciClone Pharmaceuticals Settle FCPA Inquiries with SEC](#)
- [South American Airline Executive Settles with SEC over Alleged Union Payoff](#)
- [Sweett Group Ordered to Pay £2.25 Million for Bribery Act Violations](#)
- [General Cable Reserves up to \\$28 Million for Possible FCPA Disgorgement](#)
- [Technology Company Reports Multimillion-Dollar FCPA-Related Expenses Four Years After Settlement](#)

Export Control and Sanctions Enforcement

- [Barclays Bank Agrees to \\$2.4 Million Settlement with OFAC for Alleged Sanctions Violations](#)
- [Middle Eastern Subsidiary of US Company Receives OFAC Finding of Violation](#)
- [French Oil and Gas Company to Pay \\$614,250 to Settle Alleged Violations of Cuba-Related Sanctions](#)
- [Chinese National Sentenced to Nine Years for Exporting Nuclear-Related Technology to Iran](#)

Export Control and Sanctions Developments

- [President Signs New North Korea Sanctions Legislation](#)
- [BIS Issues Temporary Denial Order to Five Parties Attempting to Sell U.S.-Origin Aircraft to Iran](#)
- [BIS Revises Cuba Export Licensing Policies](#)
- [DDTC and BIS Propose Revisions to Export Controls on Military Aircraft and Gas Turbine Engines](#)

Global Investigations Resources

- Client Alert: [The Trade Facilitation and Enforcement Act of 2015 Is on its Way to the President's Desk](#)
- [AG Trade Law Blog](#)
- [Writing and Speaking Engagements](#)

ANTICORRUPTION DEVELOPMENTS

DOJ and SEC Announce Settlement with PTC, Inc. in FCPA Case Involving SEC's First Individual Deferred Prosecution Agreement

On February 16, 2016, the [U.S. Securities and Exchange Commission](#) (SEC) and the [U.S. Department of Justice](#) (DOJ) announced that PTC, Inc. (PTC), a Massachusetts-based provider of industrial and retail software, had agreed to pay more than \$28 million to settle parallel civil and criminal investigations into alleged violations of the Foreign Corrupt Practices Act (FCPA). The SEC also announced the agency's first deferred prosecution agreement (DPA) with an individual accused of violating the FCPA.

Under the agreement, PTC's Chinese subsidiaries paid a \$14.5 million criminal penalty to the DOJ, and PTC paid \$13.6 million in disgorgement and prejudgment interest to the SEC.

According to the DOJ and the SEC, PTC's Chinese subsidiaries provided approximately \$1.5 million in improper travel and gifts to Chinese officials employed by state-owned entities. In particular, PTC financed Chinese officials' trips to New York, Las Vegas, San Diego, Los Angeles and Honolulu. While travel was usually arranged in conjunction with a business visit to PTC's headquarters in Massachusetts, following one day of business

activities, the remainder of the officials' trips lacked any business purpose. Additionally, PTC provided the officials with small electronics (such as cell phones and iPods), as well as gift cards, wine and clothes. In exchange for the travel and gifts the officials received, the state-owned entities for which they worked awarded PTC \$13 million in contracts.

Pursuant to the DPA, the SEC will defer charges against Yu Kai Yuan, a former sales executive at a Chinese subsidiary of PTC, for three years as a result of his cooperation. The SEC's specific claims against Yuan included violation of the FCPA's internal control provisions relating to books and records. While Yuan neither admitted to nor denied the allegations, he agreed to accept responsibility for his actions and did not challenge the SEC's findings of fact.

Use of a DPA in this context illustrates the potential benefits of individual cooperation during an SEC investigation. In announcing the DPA with Yuan, the SEC noted that DPAs "reward cooperation in SEC investigations by foregoing an enforcement action against an individual who agrees to cooperate fully and truthfully throughout the period of deferred prosecution."

For more information, please see previous coverage from [Red Notice](#), PTC's [press release](#) and coverage from [Reuters](#) and the [FCPA Blog](#).

SAP and SciClone Pharmaceuticals Settle FCPA Inquiries with SEC

On February 1, 2016, SAP SE, a German software developer, reached a [settlement agreement](#) with the SEC to address allegations that it violated the books and records and internal controls provisions of the FCPA. Without admitting to or denying the allegations, SAP agreed to pay \$3.7 million in profits and \$188,896 in prejudgment interest to settle charges that deficient internal controls at the company permitted its former vice president of global and strategic accounts, Vicente E. Garcia, to pay a Panamanian government official \$145,000 to secure business contracts, while also offering improper payments to two other government officials. After his initial request to pay the funds as a "commission" was rejected, Garcia was able to falsely record the payments as legitimate "discounts" in SAP's books. The use of such discounts was not subjected to heightened anticorruption screening, and Garcia recorded bribes as discounts from at least 2009 to 2013.

As covered in previous [Red Notices](#), as part of a separate enforcement action in August 2015, Garcia pleaded guilty before a federal court in the Northern District of California to a single count of conspiracy to violate the FCPA. This past December, the court sentenced Garcia to 22 months in prison.

Several days later, on February 4, 2016, the SEC and SciClone Pharmaceuticals, Inc. reached an [agreement](#) to settle allegations that SciClone violated the FCPA by making improper payments to health care professionals employed by state institutions in China.

The SEC alleged that SciClone provided various gifts to health care professionals and decision-makers in China, including golf trips, vacations and meals. SciClone provided the vacations and meals for VIP clients, and also arranged for more than \$8,000 in gifts to officials charged with approving pending licensing applications with the State Food and Drug Administration. All of the transactions were falsely recorded in SciClone's books and records as legitimate business expenses. Pursuant to the agreement, to which SciClone consented without admitting or denying the allegations, the company agreed to pay a \$2.5 million penalty, \$9.426 million in disgorgement of profits and \$900,000 in prejudgment interest.

In a [press release](#), SciClone also announced that the DOJ had completed its own investigation and "declined to pursue any action."

The SEC noted that the company had taken steps to improve its internal controls and compliance functions by, among other things, hiring a compliance officer for its China operations; disciplining employees who violate SciClone's policies; and creating an internal audit department and compliance department. SciClone is also required to provide the SEC with periodic status reports on its remediation efforts.

For more information about both of these enforcements, see the [FCPA Blog here](#) and [here](#).

South American Airline Executive Settles with SEC over Alleged Union Payoff

In early February, the SEC [announced](#) that Ignacio Cueto Plaza, the CEO of South America-based LAN airlines, agreed to pay a \$75,000 penalty to settle alleged FCPA violations related to illicit payments made to a third-party consultant. The SEC alleged that Cueto violated the internal accounting controls and books and records provisions of the Securities Exchange Act by knowingly authorizing a \$1.15 million payment to a consultant for a sham study of air routes in Argentina. According to the SEC, "Cueto knew no such study would be performed and the consultant instead agreed to help settle the labor dispute." Cueto settled the allegations without admitting to or denying the SEC's findings. In addition to the monetary penalty, Cueto must attend anticorruption training and certify his compliance with the airline's policies and procedures.

Read the SEC [order](#) and [coverage](#) from [Reuters](#) to learn more.

Sweett Group Ordered to Pay £2.25 Million for Bribery Act Violations

Following a December 2015 [guilty plea](#) to offenses under Section 7 of the U.K. Bribery Act, U.K.-listed Sweett Group, a construction-industry project management company with global operations, was [ordered](#) on February 19, 2016, to pay £2.25 million. The amount consists of a £1.4m fine (half to be paid a year from now and half by February 2018), £851,152.23 in confiscation (to be paid within three months) and £95,031.97 in costs awarded to the Serious Fraud Office (SFO).

While the SFO's investigation into individuals remains ongoing, the Sweett Group pleaded guilty late last year following an investigation that began in July 2014 related to the company's activities in the Middle East.

In response to the sentence, Director of the SFO David Green said, "Acts of bribery by UK companies significantly damage this country's commercial reputation. This conviction and punishment, the SFO's first under Section 7 of the Bribery Act, sends a strong message that UK companies must take full responsibility for the actions of their employees and in their commercial activities act in accordance with the law."

See [The Guardian](#) for more information.

General Cable Reserves up to \$28 Million for Possible FCPA Disgorgement

In its most [recent 8-K](#), General Cable Corporation, a Kentucky-based manufacturer of industrial cables, reported that it has increased its FCPA-related accrual to \$28 million, which represents its estimated profit derived from possibly tainted transactions in Angola, Thailand, India, China and Egypt. General Cable is investigating its use of agents in connection with gifts made to employees of public utility companies and/or other state-owned entities that raise concerns under the FCPA and possibly other foreign laws. The company also advised that it may need to further increase its reserve from \$28 million to \$33 million based on other transactions that are currently under review. In its filing, the company noted that its estimated FCPA-related accruals "solely reflect profits that may be disgorged based on our investigation . . . and do not include, and we are not able to reasonably estimate, the amount of any possible fines, civil or criminal penalties or other relief, any or all of which could be substantial."

To learn more, see previous [Red Notice](#) coverage and the [FCPA Blog](#).

Technology Company Reports Multimillion-Dollar FCPA-Related Expenses Four Years After Settlement

Four years after resolving FCPA-related charges with the [DOJ](#) and the [SEC](#), California-based Maxwell Technologies recently reported that it has accumulated \$2.42 million in costs throughout 2015 in connection with "previously disclosed SEC and FCPA matters." The manufacturer of energy-storage and power-delivery products paid \$13.65 million in penalties and disgorgement in early 2011 to resolve allegations that employees bribed Chinese government officials to secure sales to state-owned manufacturers. The company's [2015 Annual Report](#) indicates that the associated legal fees considerably increased operating costs in the most recent fiscal year, demonstrating the lingering financial effects of FCPA enforcements.

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Barclays Bank Agrees to \$2.4 Million Settlement with OFAC for Alleged Sanctions Violations

On February 8, 2016, U.K.-based Barclays Bank Plc agreed to pay \$2,485,890 to the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) to settle civil liability connected to apparent violations of the Zimbabwe Sanctions Regulations. The apparent violations stem from 159 transactions that Barclays processed, to or through, financial institutions in the United States from July 2008 to September 2014. These transactions were for, or on behalf of, certain corporate customers of Barclays Bank Zimbabwe Limited (BBZL) that were owned 50 percent or more by a person on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Barclays performed sanctions screening on behalf of BBZL due to local restrictions in Zimbabwe, but, according to OFAC, shortcomings in the electronic screening system at the time prevented Barclays from capturing the beneficial owners of BBZL's corporate customers. OFAC also claimed that BBZL had inadequate Know Your Customer practices and procedures. Although Barclays became aware of these weaknesses, its attempts to correct them were insufficient to block problematic transactions.

OFAC concluded that Barclays did not submit a voluntary self-disclosure and, in determining the settlement amount, considered several aggravating factors, including that (1) management had actual knowledge or reason to know of the conduct; (2) Barclays is a large and commercially sophisticated international financial institution; and (3) the bank's compliance program was inadequate to identify customers on the SDN List. Nonetheless, the penalty is less than the \$5 million base penalty amount in light of several mitigating factors. Specifically, OFAC considered that (1) Barclays had not received a penalty notice or Finding of Violation in the previous five years; (2) Barclays took remedial action in response; and (3) the prohibited entities were not publicly identified or designated as SDNs at the time the transactions were processed.

For additional information, see the OFAC enforcement [notice](#).

Middle Eastern Subsidiary of US Company Receives OFAC Finding of Violation

On February 4, 2016, Johnson and Johnson (Middle East) Inc. (JJME), a U.S. company headquartered in New Jersey, received a Finding of Violation from OFAC related to the Sudanese Sanctions Regulations. The Finding of Violation stems from JJME's supervision of Johnson and Johnson Egypt, which conducted five shipments to Sudan in 2010 totaling \$227,818. JJME's manager at the time of the transactions was unfamiliar with U.S. sanctions and had not yet received compliance training.

JJME was not penalized for the apparent violations. In reaching this resolution, OFAC considered the following aggravating factors: (1) JJME acted with reckless disregard for U.S. sanctions by conducting exports to Sudan after becoming aware of restrictions; (2) JJME's General Manager was directly involved in the conduct; (3) JJME is part of a large sophisticated corporation; and (4) JJME's compliance program did not provide training on OFAC regulations for its general manager. OFAC also considered the following as mitigating factors: (1) JJME took remedial action; (2) the exports were consumer hygiene products and therefore posed limited harm to U.S. sanctions objectives; (3) JJME had no prior sanctions history in the previous five years; and (4) JJME cooperated extensively with OFAC in the investigation.

For additional information, see the OFAC [enforcement notice](#) and [Finding of Violation](#).

French Oil and Gas Exploration Company to Pay \$614,250 to Settle Alleged Violations of Cuba-Related Sanctions

On February 22, 2016, CGG Services S.A. (CGG), an oil and gas exploration company based in France, agreed to pay \$614,250 to OFAC to settle alleged violations of the Cuban Assets Control Regulations (CACR). According to OFAC, in 2010 and 2011, CGG and its U.S. affiliate exported items subject to U.S. export controls, such as spare parts and equipment used for oil and gas exploration, to Cuba's territorial waters on multiple occasions. In 2011, the Venezuelan subsidiary of CGG's U.S. affiliate processed data from seismic surveys conducted in Cuba's economic zone, which ultimately benefited a Cuban company. OFAC concluded that CGG did not voluntarily disclose the alleged violations.

In determining the settlement amount, OFAC considered the following as aggravating factors: (1) CGG acted with reckless disregard for U.S. sanctions by exporting U.S.-origin goods after being informed that such exports were in violation of U.S. sanctions; (2) CGG's affiliate did not determine whether processing data for seismic surveys benefited a Cuban-entity; (3) CGG was aware that U.S.-origin items were being transported aboard vessels to Cuba; and (4) the transactions significantly undermined U.S. sanctions objectives due to the nature of the items. OFAC also took into account the following mitigating factors in reducing the penalty for the alleged violations from the base penalty of \$975,000: (1) CGG did not have a sanctions penalty or Finding of Violation in the past five years; (2) CGG took steps to avoid sanctions violations by removing U.S. personnel and items from vessels operating in Cuban territorial waters; (3) CGG adjusted its supply procedures to avoid future sanctions violations; and (4) CGG and its affiliates cooperated with OFAC's investigation.

For more information, see OFAC's [notice](#) of enforcement.

Chinese National Sentenced to Nine Years for Exporting Nuclear-Related Technology to Iran

Sihai Cheng, a Chinese national, was sentenced to nine years in prison for violating U.S. sanctions prohibiting the export of technology used to make nuclear weapons-grade uranium. According to the plea agreement, from 2009 to 2012, Cheng conspired to export, and ultimately exported, U.S.-origin pressure transducers from the United States to Iran by way of China. The transducers can be used in gas centrifuges to enrich uranium. They cannot be shipped to China without a license and are prohibited for export from the United States to Iran.

For additional information, see the DOJ [press release](#) and [coverage](#) in the *Boston Business Journal*.

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

President Signs New North Korea Sanctions Legislation

On February 18, 2016, President Obama signed into law the [North Korea Sanctions and Policy Enhancement Act of 2016](#) (the "Act"), which strengthens and expands existing U.S. sanctions against the authoritarian regime. The legislation was proposed shortly after continued ballistic missile testing early this month and nuclear proliferation activities by the North Korean regime. The Act received broad bipartisan support in both houses of Congress and authorizes Obama to impose economic sanctions on North Korean persons and entities engaged in the proliferation of weapons of mass destruction and those that threaten U.S. cybersecurity and commit human rights

violations. It also imposes mandatory sanctions for entities involved in North Korea's mineral or metal trade.

For additional information, see coverage in the [New York Times](#).

BIS Issues Temporary Denial Order to Five Parties Attempting to Sell U.S.-origin Aircraft to Iran

Late last month, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued a Temporary Denial Order (TDO) against five non-U.S. parties (two companies and three individuals) attempting to sell U.S.-origin aircraft to Caspian Airlines. Caspian Airlines is an Iranian airline designated in 2014 under terrorism-related sanctions, which have not been lifted under the Joint Comprehensive Plan of Action (JCPOA). The TDO denies the export privileges for the five parties in question in an effort to prevent an imminent export control violation. The orders are issued for a renewable 180-day period.

For additional information see, the BIS [press release](#) and [Temporary Denial Order](#).

BIS Revises Cuba Export Licensing Policies

Late last month, BIS revised its general policy of denial for licenses to export or reexport U.S.-origin items to Cuba. The revisions now provide for a general policy of approval for items relating to the safety of civil aviation and safe operation of commercial aircraft, certain telecommunications and agricultural items, items used by human rights organizations and items used by U.S. news bureaus.

BIS also revised the exceptions to its general policy of denial to allow case-by-case review of certain exports and reexports that meet the needs of the Cuban people. Such exports include items for agricultural production, artistic endeavors, education, food processing, disaster preparedness, relief and response, public health and sanitation, residential construction and renovation, public transportation, warehouses and retailers, and construction of facilities for treating public water supplies, supplying electricity and other infrastructure.

For additional information, see the BIS [Notice of Final Rule](#) in the *Federal Register*.

DDTC and BIS Propose Revisions to Export Controls on Military Aircraft and Gas Turbine Engines

On February 9, 2016, the State Department's Directorate of Defense Trade Controls (DDTC) issued a proposed rule to amend Categories VIII and XIX of the United States Munitions List (USML), which control aircraft and gas turbine engines, respectively. In parallel, BIS issued a proposed rule to amend parts of the Commerce Control List (CCL) that control military aircraft and gas turbine engines to clarify the types of military aircraft controlled on the CCL. The changes made by both DDTC and BIS are in furtherance of Export Control Reform, an interagency initiative designed to revise U.S. export control regulations to ensure that export controls do not inadvertently control items in normal commercial use, account for technological developments, and properly implement national security and foreign policy objectives. Both DDTC and BIS will accept comments on the proposed changes until March 25, 2016.

For more information, see the [BIS](#) and [DDTC](#) Proposed Rules published in the *Federal Register*.

[Back to top.](#)

WRITING AND SPEAKING ENGAGEMENTS

On March 8-9, partner [Tamer Soliman](#) will speak on a panel titled "Iran Deal: Impact of the Loosening of Sanctions in Iran on Trade within the Gulf Cooperation Council" at C5's 3rd annual forum on Trade Compliance in the Middle East in Dubai. For more information, click [here](#).

On March 24, counsel [Rebekah Jones](#) will participate on a panel titled, "Recent ITAR Enforcement Activities" at the Export Compliance Training Institute's Singapore 2016 Summit on U.S. Export Controls on Non-U.S. Transactions.

On March 30-31, partner [Shiva Aminian](#) will speak on a panel titled "How to Define an 'Export' in the Context of Cloud Computing: The Latest on Proposed Changes Impacting Transfers of Encryption Software" at ACI's 6th Advanced Industry Forum on Global Encryption Controls in San Francisco, CA. For more information, click [here](#).

On May 3, partner [Jim Benjamin](#) is speaking on "Hypothetical: Ethical Issues" at PLI's The Foreign Corrupt Practices Act and International Anti-Corruption Developments 2016. For more information, see [here](#).

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

[Back to top.](#)

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