

**Akin Gump**

STRAUSS HAUER & FELD LLP

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



DECEMBER 2013

## Introduction

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

This month on the anticorruption front, an oil services giant agrees to pay over a quarter of a billion dollars to settle Foreign Corrupt Practices Act (FCPA) and sanctions allegations; Siemens agrees to pay a Swiss enforcement authority related to bribery allegations in Europe; and a U.S. government contractor pays a multimillion dollar fine for allegations including illegal payments to an Army Corp of Engineers official. Also this month, Department of Justice (DOJ) and Securities and Exchange Commission (SEC) officials spoke at length about FCPA enforcement at the annual FCPA conference in Washington, DC. Read Akin Gump's coverage of the conference's major developments related to [FCPA Enforcement Trends and Priorities](#), [Simultaneous FCPA and U.K. Bribery Act Investigations](#) and [Considerations for FCPA Internal Investigations](#).

In export control and sanctions enforcement news, a computer parts manufacturer is fined USD 300,000 for violations of the Arms Export Control Act (AECA) and its owner is sentenced to four months in prison; an energy services provider pays over USD 250 million to settle allegations of sanctions violations; the Department of State ("State Department") imposes statutory debarment of export privileges on 37 individuals; a Chinese national is sentenced to nine years in prison for international weapons trafficking; and the State Department debars a former export compliance officer for alleged violations of the AECA and the International Traffic in Arms Regulations (ITAR).

Finally, in developments in export control and sanctions law, further categories of the U.S. Munitions List (USML) have come under revisions of the President's Export Control Reform.

Thank you as always for reading *Red Notice*.

## Speaking Engagements

This past month, Akin Gump's Lars-Erik Hjelm spoke on a panel entitled "Safeguarding your Company from Costly Rules of Origin Mistakes: What Every Customs Professional Needs to Know" at C5's 6th Advances Forum on Customs Compliance at the Grange City Hotel in London.

Also, Akin Gump's Chuck Connolly and Jonah McCarthy presented "On the Inside Looking Out—A Discussion of the Increased Enforcement Actions Against In-House Counsel" live and via webcast, in coordination with the Washington Metropolitan Area Corporate Counsel Association.

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](mailto:mwarfield@akingump.com) or +1.202.887.4464.

**ANTICORRUPTION DEVELOPMENTS**

## **Oil Services Firm Agrees to Pay Over USD 250 Million to Settle FCPA and Other Criminal Violations**

In late November 2013, DOJ and SEC announced an agreement with three subsidiaries of Swiss oil services company Weatherford International Ltd. ("Weatherford") to settle FCPA and criminal export violations. Under the agreement, certain Weatherford subsidiaries will pay penalties and fines totaling more than USD 252 million, plead guilty to one count of violating the FCPA's internal controls provisions and plead guilty to export controls charges. Weatherford also agreed to settle a civil FCPA enforcement case with the SEC and will enter into two deferred prosecution agreements—one with the DOJ related to FCPA violations and another with the Department of Commerce and the Department of the Treasury for export control violations. According to the DOJ, prior to 2008, Weatherford failed to establish internal controls to prevent FCPA violations, despite the risks posed by the company's industry and the regions in which it operates. This failure allowed the Weatherford subsidiaries to engage in corruption in Africa and the Middle East, and fraudulently misuse the United Nations Oil for Food Program. Weatherford subsidiaries also reportedly participated in the unlicensed export or re-export of U.S.-origin goods to sanctioned countries such as Iran and Syria. Read the DOJ [release](#), the SEC [release](#) and [coverage](#) at *The Wall Street Journal*.

## **Siemens Reaches Agreement with Swiss Prosecutors to Pay Over USD 10 Million for Russian Gas Bribes**

In mid-November 2013, Swiss federal prosecutors announced that a Sweden-based subsidiary of Germany's Siemens AG acknowledged its failure to prevent bribery in Russia and agreed to pay the equivalent of nearly USD 11 million in fines and disgorged profits. Siemens Industrial Turbomachinery allegedly paid senior executives of a Russian state-owned gas company in the mid-2000's in exchange for contracts related to equipment for the Yamal gas pipeline. Russian media reports that the bribes were likely directed to senior executives of Russia's Gazprom, as it is the country's only state-owned gas company. Read the [coverage](#) at *The Moscow Times*.

## **DOD Contractor Paid USD 2.7 Million to Settle False Claims and Bribery Allegations**

In early November 2013, a U.S. government contractor in Iraq paid USD 2.7 million to settle potential False Claims Act allegations stemming from alleged bribes paid to a U.S. official to obtain construction contracts with the Department of Defense. According to the DOJ, a company called Iraqi Consultants and Construction Bureau paid an Army Corps of Engineers official for information that assisted the company in winning the contracts, and then overcharged the government in performing the work designated by the contracts. Read DOJ's [release](#) and [coverage](#) at *Law360*.

## **EXPORT CONTROL AND SANCTIONS ENFORCEMENT**

### **Energy Services Provider Settles With U.S. Government for Alleged Export Control and Sanctions Violations**

Weatherford International Ltd. ("Weatherford"), a Texas energy services provider, and four of its affiliates agreed on November 26,

2013 to pay a total of USD 100 million in penalties to various U.S. government agencies—the Bureau of Industry and Security (BIS), the Office of Foreign Assets Control (OFAC) and DOJ—for alleged violations of the Export Administration Regulations, the Iranian Transactions and Sanctions Regulations, the Cuban Assets Control Regulations and the Sudanese Sanctions Regulations. The global settlement stems from allegations that Weatherford transshipped oil and gas equipment to Iran, Syria and Cuba with the intention to circumvent U.S. export controls and sanctions, and also exported pulse neutron decay tools to Venezuela and Mexico without the appropriate licenses. The BIS portion of the settlement, USD 50 million, represents the largest civil penalty ever imposed by BIS. OFAC deemed that its violations were addressed in the BIS settlement and did not impose an additional fine on Weatherford. The company's conduct was considered to be willful, and various executives and senior management are alleged to have known or had reason to know of the conduct that led to the apparent violations. DOJ's settlement, announced the same day, imposed a USD 48 million penalty on Weatherford in a related action pursuant to a deferred prosecution agreement, as well as an additional USD 2 million in criminal fines against two Weatherford subsidiaries. Read the BIS [press release](#), the OFAC [press release](#) and the [press release](#) from DOJ, as well as [coverage](#) by *The New York Times*. Combined with the FCPA settlement described in the preceding section, Weatherford paid a total of USD 252.7 in penalties and fines for violations of U.S. laws.

### **Computer Parts Manufacturer and Company Owner Sentenced for Violations of the AECA**

On October 28, 2013, DOJ announced that Seattle-area printed circuit board (PCB) company Precision Image Corporation (PIC) and its owner, Mr. Chih-Kwang Hwa, were sentenced for violating the AECA by exporting technical data controlled by ITAR to Taiwan without a license. PIC had obtained the data through a contract to supply PCBs to the U.S. Navy. In fulfilling that contract, PIC wired sensitive data regarding technical specifications for the PCBs to a manufacturer in Taiwan. DOJ asserted that Mr. Hwa knew that the information was ITAR-controlled and could not be exported without a license from the Directorate of Defense Trade Controls (DDTC) of the State Department. After delivering the completed PCBs to the U.S. Navy, Mr. Hwa claimed they had been manufactured in the United States. As a result of the sentencing, PIC was fined USD 300,000, and Mr. Hwa was sentenced to four months in prison for wire fraud, as well as an additional six months of home detention as part of his two years of supervised release. Read the DOJ [press release](#) and [press coverage](#).

### **State Department Imposes Statutory Debarment of Export Privileges on 37 Individuals**

The Bureau of Political-Military Affairs of the State Department issued a [notice](#) in the *Federal Register* on November 7, 2013 barring 37 persons who have been convicted of violating, or conspiring to violate, the AECA from obtaining export licenses from the State Department for the export or re-export of defense articles or services. Statutory debarment is based on a person's conviction of an AECA violation in a criminal proceeding in a U.S. court. The length of the debarment is generally three years following the date of the conviction, although the Assistant Secretary for Political-Military Affairs has discretion to

the Assistant Secretary for Political-Military Affairs has discretion to vary the length of the denial depending on the nature of the person's violations. Reinstatement of export privileges is not automatic, but instead follows the request of the debarred person and a thorough interagency review. A debarred person may apply to the Director of the Office of Defense Trade Controls Compliance for reinstatement as early as one year after the date of debarment. More information on statutory debarments can be found on the State Department [website](#).

### **Chinese National Sentenced to Nine Years in Prison for International Weapons Trafficking**

Zhifu Lin, a twenty-seven year old Chinese national living in West Virginia, was sentenced on November 15, 2013 to nine years in prison for violations of the AECA based on his illegal trafficking of weapons controlled under ITAR, including military-style assault weapons, from the United States to China without a license. The U.S. District Attorney's Office for the Eastern District of New York led the investigation against Lin. Between 2010 and 2012, Lin and two others—Joseph Debose and Lilan Li—illegally exported several shipments of high-powered weapons to Shanghai, hiding the weapons in otherwise innocuous packages and shipping them through New York. In addition to his prison sentence, Lin, who came to the United States on a student visa in 2009, faces deportation following his prison term. Read the DOJ [press release](#) and the Immigration and Customs Enforcement [news release](#). Read [coverage](#) by *The New York Times*.

### **State Department Debars Individual for Alleged Violations of the AECA and the ITAR**

The DDTTC issued a debarment order against LeAnne Mesmeister on November 25, 2013, for causing twenty-one alleged violations of the AECA and the ITAR. Ms. Mesmeister is alleged to have committed these violations while employed as a senior export compliance officer at Honeywell International, Inc. ("Honeywell"), where she is said to have created and used export control documents that contained false or incomplete statements with the intention of exporting unauthorized data, defense articles or defense services. She worked for Honeywell for 27 years in export compliance until she was terminated in 2012 upon discovery of these violations. Ms. Mesmeister failed to answer the DDTTC charging letter, which was issued in July 2013. Consequently, an administrative law judge deemed Ms. Mesmeister's failure to answer as an admission of the facts alleged in the charging letter, leading to the debarment order now issued by the DDTTC. Read the State Department [debarment order](#).

## **EXPORT CONTROL AND SANCTIONS LAW DEVELOPMENTS**

### **Further Categories of the USML Come Under Revisions of the President's Export Control Reform**

In furtherance of the President's Export Control Reform Initiative, the DDTTC announced on November 14, 2013 that it will begin reviewing newly submitted commodity jurisdiction requests for specific categories of items, as delineated in the Amendment to the International Traffic in Arms Regulations: Initial Implementation of

Export Control Reform *Federal Register* [notice](#) on July 8, 2013. The relevant items are those found under USML categories VI (Surface

Vessels of War and Special Naval Equipment), VII (Ground Vehicles), XIII (Materials and Miscellaneous Articles) and XX (Submersible Vessels and Related Articles). Though the revisions to these categories do not take effect until January 6, 2014, the DDTC issued the notice in November 2013, 60 days prior to the effective date, as determinations on commodity jurisdictions submitted from this point forward will not be issued until after the January 6, 2014 effective date. Read the [Industry Notice](#).

## CONTACT INFORMATION

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

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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](#).

Translations of this edition of *Red Notice* into Chinese and Russian will be available later this month. Please check back via the [archived editions link](#) to view past translated editions.

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