

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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ANTICORRUPTION DEVELOPMENTS

Mega International Commercial Bank Co. Ltd. Fined \$29 Million

On January 17, 2018, the U.S. Federal Reserve Board assessed Taiwan-based bank Mega International Commercial Bank Co. Ltd. a \$29 million penalty. According to the Fed's Cease and Desist Order, a recent examination of the Bank's New York, Chicago, and Silicon Valley branches “disclosed significant deficiencies

relating to the New York Branch's risk management and compliance with . . . anti-money laundering compliance. . . ." The Order further requires the Bank to enhance its anti-money laundering protocols and to submit a plan for the same within 60 days.

The Cease and Desist Order is available [here](#). For more information, see *Law360's* coverage [here](#).

Former Executive of Nuclear Material Transport Company Charged with Russian State Energy Agency Bribes

On January 12, 2018, the Department of Justice (DOJ) unsealed an 11-count indictment against Mark Lambert, the former president of a Maryland-based transportation company, revealing charges against Lambert for participation in a scheme to bribe a Russian government official in violation of the Foreign Corrupt Practices Act (FCPA). Lambert is alleged to have paid bribes to JSC Techsnabexport (TENEX), a subsidiary of Russia's State Atomic Energy Corporation from 2009 through October 2014, in exchange for the award of uranium transport contracts. Two former colleagues of Lambert's pled guilty to charges based on the same events in 2015, and Vadim Mikerin, the Russian official whom Lambert is alleged to have sought to influence, is currently serving a prison sentence of 48 months.

DOJ's press release is available [here](#). For more information, see *FCPA Blog's* coverage [here](#) and *Law360's* coverage [here](#).

Trade Group of U.S. Banks Supports FinCEN Registration to Counteract Money Laundering

On January 9, 2018, legislative efforts to create a national database of corporations and their ultimate beneficial owners received the endorsement of Clearing House, a trade group comprising many of the largest U.S. banks. This effort builds on the 2016 rule from the Financial Crimes Enforcement Network (FinCEN), which requires financial institutions to collect information about the ultimate beneficial owners of companies with whom they transact in an attempt to prevent money laundering through shell companies. FinCEN suggested that Congress act to create a national database when it issued the rule in 2016. Financial institutions subject to FinCEN's rule—previously covered by Red Notice in [August 2016](#) and [October 2017](#)—must comply by May 11, 2018.

The proposed database is part of a broader bill advocating for changes in the regulatory regime related to money laundering put forward by U.S. House Representatives Steve Pearce (R-MD) and Blaine Luetkemeyer (R-MO). The draft bill has been discussed in the House Banking Committee, but there is no timeline indicated for it to reach the floor.

For more information, see coverage from *The Wall Street Journal* [here](#).

Petrobras Resolves Class Action Lawsuit with Promise to Pay \$2.95 Billion to Shareholders

On January 3, 2018, Brazilian state-owned energy company Petrobras, Inc. reached an agreement to settle a class action lawsuit brought by shareholders who claim that they lost money because of corruption at the company, ending almost three years of litigation of these class action claims. While the settlement still has to be approved by S.D.N.Y. District Judge Jed Rakoff, counsel for the shareholders deemed the agreement—which admits no liability on the part of Petrobras—a success, though several individual shareholder suits may still proceed independently.

Petrobras' press release is available [here](#). For more information, see coverage from *Reuters* [here](#), *Bloomberg* [here](#) and from the *FCPA Blog* [here](#).

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EXPORTS, SANCTIONS AND CUSTOMS ENFORCEMENT

Texas Man Sentenced for Conspiring to Illegally Export Radiation Hardened Integrated Circuits to Russia and China

On January 24, 2018, the U.S. Attorney's Office for the Eastern District of Texas and the National Security Division of the Department of Justice (DOJ) announced that Peter Zuccarelli had been sentenced to 46 months in prison, three years supervised release, and a \$50,000 fine for conspiring to smuggle and illegally export radiation hardened integrated circuits (RHICs) for use in the space programs of China and Russia without obtaining a license from the Bureau of Industry and Security (BIS) of the Department of Commerce.

According to the press release, between June 2015 and March 2016, Chinese and Russian customers sent Zuccarelli orders for RHICs, along with \$1.5 million to purchase these items. Zuccarelli used the money to order the controlled goods and provided false certifications to domestic suppliers, stating that his own U.S. company was the end user. After receiving the RHICs, he repackaged them and declared them as "touch screen parts" before shipping them outside of the United States. Zuccarelli also created false paperwork and made false statements in order to conceal the conspiracy from the U.S. government.

For additional information, please see the DOJ [press release](#), as well as [previous coverage](#) in Red Notice.

Los Angeles-Area Men Charged with Conspiring to Illegally Obtain and Export Technology and Computer Chips to China

On January 19, 2018, the U.S. Attorney's Office for the Central District of California announced charges against Yi-Chi Shih, 62, an electrical engineer who is a part-time Los Angeles resident, and Kiet Ahn Mai, 63, of Pasadena. The charges were filed in connection with a scheme to illegally export monolithic microwave integrated circuits (MMIC) and associated technology to a Chinese company without the required export license from BIS. In addition to civil applications, MMICs are used in electronic warfare, electronic warfare countermeasures and radar applications.

According to the press release, Shih and Mai accessed the computer systems of a U.S. company via its web portal after Mai obtained access by posing as a domestic customer seeking to obtain custom-designed MMICs for use solely in the United States. The pair allegedly concealed their true intent and Shih sent the MMICs to a Chinese company on the BIS Entity List without a license from BIS, in violation of the International Emergency Economic Powers Act (IEEPA).

Each defendant is charged with conspiracy to illegally access a protected computer of a U.S. company, mail fraud, wire fraud, and international money laundering. Shih is also charged with violating the IEEPA. If convicted, Mai could face up to five years in federal prison, and Shih could be sentenced to as many as 25 years in prison.

For further information, please see the DOJ [press release](#).

Jury Convicts Turkish Banker of Conspiracy and Bank Fraud in Scheme to Aid Iran

On January 3, 2018, a jury in the Southern District of New York convicted Turkish banker Mehmet Hakan Atilla, 47, of four counts of conspiracy and one count of bank fraud in connection with a scheme to supply currency and gold to the government of Iran, Iranian entities, and other parties on the Specially Designated National (SDN) List, in violation of U.S. sanctions restrictions and the IEEPA.

According to a prior charging announcement from the DOJ, Halkbank, a Turkish government-owned bank at which Atilla was the Deputy General Manager of International Banking, engaged in transactions that violated U.S. sanctions against Iran. Atilla and his alleged co-conspirators used a network of companies to supply currency and gold to sanctioned entities while concealing Halkbank's role in the violation of U.S. sanctions from regulators. As a result of this scheme, Atilla and his alleged co-conspirators induced U.S. banks to unknowingly process international financial transactions in violation of the IEEPA.

Atilla's seven alleged co-conspirators include former Turkish economic minister Mehmet Zafer Caglayan, in addition to Turkish-Iranian businessman Reza Zarrab, whose testimony also implicated Turkish President Erdogan in the scheme. Each of Atilla's alleged co-conspirators is charged with conspiracies to defraud the United States, violate the IEEPA, commit bank fraud, and commit money laundering, as well as substantive counts of bank fraud and money laundering.

For further information, please see the prior [DOJ charging announcement](#), [coverage](#) in *Law360*, and [previous coverage](#) in Red Notice.

Furniture Company Settles False Claims Act Suit for \$10.5 Million

On January 16, 2018, Bassett Mirror Company agreed to pay \$10.5 million to resolve allegations that it violated the False Claims Act by knowingly making false statements on customs declarations to avoid paying 216 percent antidumping duties on wooden bedroom furniture that it imported from China.

According to the DOJ press release, between January 2009 and February 2014, Bassett Mirror allegedly evaded antidumping duties by knowingly misclassifying wooden bedroom furniture that it imported from China as non-bedroom furniture that was not subject to antidumping duties on its customs entry declarations. The civil lawsuit was filed in the Southern District of Georgia, and as part of the settlement, the whistleblower, Kelly Wells, will receive approximately \$1.9 million. Another co-defendant in the case, Z Gallerie LLC, settled with the government for \$15 million in 2016 to resolve similar allegations regarding misclassifying bedroom furniture. Macys and Neiman Marcus are also named as defendants in the case.

For further information, please see the DOJ [press release](#) regarding the Bassett settlement and the DOJ [press release](#) regarding the settlement with Z Gallerie.

Furniture Company Challenges DOJ Allegations of Misclassifying Entries to Avoid Antidumping Order

On January 17, 2018, Blue Furniture Solutions LLC filed a motion in the U.S. District Court for the Western District of Texas to dismiss a False Claims Act suit that alleges Blue Furniture knowingly and fraudulently evaded

millions of dollars in antidumping duties and customs fees owed between 2011 and 2015 by making false statements to U.S. Customs and Border Protection (CBP). Specifically, the government alleges that Blue Furniture purposefully misclassified and misrepresented the imported furniture on its customs entries as merchandise that was not subject to antidumping duties, even though the chests, dressers, nightstands, wardrobes, and many of the beds Blue Furniture imported were in fact subject to antidumping duties on wooden bedroom furniture. The government also accuses Blue Furniture of instructing its China-based manufacturers and exporters to mislabel and misclassify the merchandise in documents provided to CBP. In its motion to dismiss, Blue Furniture argues that the complaint is devoid of any detailed allegations regarding its purportedly fraudulent conduct.

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EXPORTS, SANCTIONS AND CUSTOMS DEVELOPMENTS

CBP Border Searches of Phones and Laptops Increased Substantially in 2017

On January 4, 2018, CBP issued a directive updating its policies with respect to searches of electronic devices, including computers and phones, at border crossings. The new guidance continues CBP's long-standing border search policy while making modifications to address privacy concerns. According to the press release, one CBP official noted that the updated directive includes provisions above and beyond prevailing constitutional and legal requirements.

In addition to the updated directive, CBP released statistics showing that it conducted 30,200 border searches of electronic devices in 2017, a significant increase from 19,051 in 2016. Companies, corporate employees, and their counsel with U.S. operations or engaged in business with sanctioned countries or controlled technology should be aware of the materials they carry when crossing the U.S. border and should consider formalizing or updating travel policies to account for CBP's latest directive.

For further information, please see the CBP [press release](#) and the updated [directive](#).

State and Commerce Issue Regulations Adjusting Maximum Civil Monetary Penalties for Inflation

The departments of State and Commerce have issued regulations implementing the Federal Civil Penalties Inflation Adjustment Act of 1990. This law requires federal agencies to periodically adjust for inflation the Civil Monetary Penalties (CMPs) within their jurisdiction. Consequently, the Department of State issued a final rule on January 3, 2018 adjusting the maximum CMP for violations of the International Traffic in Arms Regulations to \$1,134,602. In addition, on January 8, 2018, the Department of Commerce issued a final rule adjusting the maximum CMPs for violations of IEEPA to \$295,141.

For additional information, please see the Final Rules issued by the [Department of State](#) and the [Department of Commerce](#).

Venezuela: OFAC Lists Additional Venezuelan Entities and Issues FAQ on Proposed Digital Currency

On January 5, 2018, the Department of Treasury's Office of Foreign Assets Control (OFAC) designated four current or former Venezuelan government officials associated with corruption and repression in Venezuela. According to the OFAC press release, the designations followed a decree from Venezuela's Constituent Assembly, which effectively eliminates the right of three influential opposition parties to participate in next year's presidential election. The Constituent Assembly was created by President Nicolas Maduro, and it is viewed by the United States as an illegitimate body.

Relatedly, on January 19, 2018, OFAC issued Venezuela Sanctions FAQ #551, noting that the Venezuelan digital currency announced last month by President Maduro may be an extension of credit to the Venezuelan government.

For further information, please see the OFAC [press release](#) and the [web notice](#) regarding the new Venezuela FAQ.

Implementing CAATSA Sanctions on Russia: Deadlines for "Oligarchs" and "Sovereign Debt" Reports, Authority for Sanctions on Russian Intelligence and Defense Sectors, and Amended Directive 4

On January 29, 2018, the statutory deadline under the Countering America's Adversaries Through Sanctions Act (CAATSA), the Treasury Department submitted reports to Congress on Russian oligarchs ("Oligarch List"), parastatal entities, and the effects of expanding sanctions to include sovereign debt and derivative products. The unclassified version of the Oligarch List was substantially similar to public sources on the same topic and

identified 96 oligarchs, as well as 114 senior political figures of the Russian Federation, including members of the Presidential administration, Cabinet of Ministers and other senior political leaders. The Treasury Department emphasized that the report is not a sanctions list and that it should not be interpreted to impose sanctions on the individuals or entities listed. A classified annex was also included in the report, which may include parties not identified in the unclassified version. The Treasury Department submitted the list of parastatal entities and the sovereign debt report in a classified version only.

Effective January 29, 2018, President Trump has the authority to impose sanctions on those entities and individuals that the President determines knowingly engages in significant transactions with persons that are part of, or operate for or on behalf of, the defense or intelligence sectors of the Russian government. Last October, the State Department released a list of 39 entities that it deemed met the criteria above, and on January 29, 2018, Secretary of State Rex Tillerson explained that while the State Department was authorized to impose sanctions on those parties, it would not take any action yet.

Finally, amended Directive 4 of Executive Order 13662 (“amended Directive 4”) also became effective on January 29, 2018. Specifically, pursuant to CAATSA, this directive now restricts deepwater, Arctic offshore and shale oil projects worldwide that are initiated on or after January 29, 2018 and meet the other criteria in amended Directive 4.

For additional information, please see the Akin Gump [client alert](#).

Iran: President Trump Gives the Iran Nuclear Deal a “Last Chance” While Pressuring European Allies to Act

On January 12, 2018, President Trump waived certain nuclear sanctions under the Joint Comprehensive Plan of Action (JCPOA) and declined to certify that the JCPOA is in the national interest of the United States. The President made clear that the U.S. will refuse to renew these waivers by the next waiver deadline this May and will withdraw from the JCPOA, unless the U.S. and its European allies reach an agreement to impose additional sanctions on Iran and eliminate the sunset clauses in the JCPOA. On the same day, OFAC sanctioned 14 individuals and entities from Iran, China and Malaysia in connection with serious human rights abuses and censorship in Iran and support to designated Iranian weapons proliferators. These steps are consistent with the strategy that the President announced in October, designed to counter Iran’s sponsorship of terrorism, human rights abuses and proliferation activities. If the U.S. and its European allies continue to diverge on Iran-related sanctions, multinational companies in both the U.S. and Europe will likely face increasing compliance challenges in responding to the changing landscape of Iran-related sanctions.

For further information, please see the Akin Gump [client alert](#).

Trump Administration: 2017 Recap and 2018 Outlook

President Trump withdrew from the Trans-Pacific Partnership shortly after his inauguration and initiated a renegotiation of NAFTA in May. The administration has also taken steps to reopen KORUS, and indicated in 2017 that it may press for reforms to the World Trade Organization. At the Department of Commerce, officials began antidumping and countervailing duty investigations on aluminum exports from China, and the agency is currently undertaking several investigations permitted under U.S. and international trade law, including Section 232, Section 201 and Section 301. Finally, additional rounds of NAFTA renegotiations discussions are planned for 2018, and Commerce will continue its investigations into other nations’ trade practices.

In addition, the Trump administration has ratcheted up scrutiny of foreign investment in the United States. Following a trend that began in the Obama administration, the Committee on Foreign Investment in the United States (CFIUS or the “Committee”) reviewed a record-breaking number of cases in 2017 and increasingly focused on Chinese investment. The Committee thwarted Chinese investments in the United States across a variety of industries and caused significant delays in other transactions that were subjected to extended reviews. Meanwhile, Congress proposed a bill with bipartisan sponsorship that would expand the scope of CFIUS jurisdiction, among other changes aimed at bolstering national security reviews of inbound deals and, significantly, outbound joint ventures of U.S. companies. The motivation for the proposed changes is largely to prevent transfers to China of emerging and other types of technologies of concern. The relevant House and Senate committees plan to hold hearings on the reform bill in early 2018. Unless something significant happens thereafter, legislative changes to CFIUS are a real possibility in 2018.

For additional details, please see the Akin Gump report, [Trump Administration: 2017 Recap and 2018 Outlook](#).

European Court of Justice: Intercompany Pricing Cannot Be Used for EU Import/Customs Purposes if Subject to Adjustments

On December 20, 2017, the European Court of Justice (ECJ) issued an important decision with respect to the use of intercompany transfer pricing for customs valuation for imports in the European Union (EU). The judgment bars the use of intercompany transfer prices for EU imports if (as is commonly the case) they are subject to retroactive adjustments. This means that EU importers who buy from related vendors may have to change the basis for valuation of their EU imports.

For more information, please see the Akin Gump [client alert](#).

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WRITING AND SPEAKING ENGAGEMENTS

On February 7-8, [Jasper Helder](#) will speak at NielsonSmith's Export Compliance in Europe conference in Munich, Germany.

On February 14-15, [Jasper Helder](#) and [Chiara Klau](#) will speak at NielsonSmith's EU and EU Member State Trade Controls Compliance for North American Companies Reach Out Summit in Washington, D.C.

On February 27, [Chiara Klau](#) will speak at C5's U.S. Trade Controls Compliance in Europe ITAR and EAR Forum in London, UK.

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.

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