

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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ANTICORRUPTION DEVELOPMENTS

Alere Inc. Agrees to Pay More Than \$13 Million to Resolve SEC FCPA Enforcement Action

On September 28, 2017, Alere Inc. (“Alere”), a Massachusetts-based manufacturer of medical diagnostic and testing equipment, submitted an Offer of Settlement to the Securities and Exchange Commission (SEC), resulting in an administrative Cease-and-Desist Order resolving the government’s investigation of alleged violations of the Foreign Corrupt Practices Act (FCPA).

Specifically, the SEC’s enforcement action alleges that, between 2011 and 2013, Alere subsidiaries in India and

Colombia used distributors or consultants to make improper payments to officials of government agencies or entities under government control to get or retain business for Alere.

Separately, the enforcement action also alleges that Alere subsidiaries improperly inflated revenues by prematurely recording sales for products that were still being stored at warehouses or otherwise yet to be delivered to its customers.

As part of the resolution, Alere agreed to pay a civil money penalty of \$9,200,000, disgorgement of \$3,328,689 and prejudgment interest of \$495,196.

The SEC's press release and Cease-and-Desist Order are available [here](#). For more information, see *The New York Times*' coverage [here](#), *The Wall Street Journal*'s coverage [here](#), *the FCPA Blog*'s coverage [here](#), and *Law360*'s coverage [here](#).

Former Telecommunication Director Sentenced to Time Served for Alleged Role in Foreign Bribery Scheme

On September 28, 2017, Amadeus Richers, a former director of Cinergy Telecommunications Inc. ("Cinergy"), a Miami-based telecommunications company, was sentenced to time served and three years of supervised release for his role in an alleged conspiracy to pay over \$1.4 million in bribes to officials at Telecommunications D'Haiti to obtain preferential rates on landline calls in Haiti for Cinergy. Richers had been extradited from Panama and held without bail since February of this year.

Cinergy and Richers were originally named in a superseding indictment filed on January 19, 2012 (both were charged with numerous violations of the FCPA), but, on February 24, 2012, the court ordered the charges against Cinergy dismissed with prejudice after the Department of Justice (DOJ) elected not to go to trial based on a finding that Cinergy was then nonoperational, had no employees and had no assets of any real value.

The DOJ's original press release announcing the indictments of Cinergy and Richers is available [here](#), and the press release announcing Richer's guilty plea is available [here](#). For more information, see the *FCPA Blog*'s coverage [here](#) and *Law360*'s coverage [here](#).

DOJ Arrests 10 Individuals Allegedly Involved in NCAA Basketball Corruption Schemes

On September 26, 2017, the DOJ announced that it had arrested 10 individuals, including four NCAA Division I coaches, for their participation in fraud and corruption schemes.

According to the federal criminal complaints filed with the Southern District of New York, the college basketball coaches took cash bribes from athlete advisors, including business managers and financial advisors, in exchange for using their influence over their players to persuade them to retain the athlete advisors paying the bribes. Additionally, in a second alleged scheme, senior executives at Adidas AG ("Adidas"), working in connection with athlete advisors, facilitated bribe payments to players and their families to secure those players' commitments to attend universities sponsored by Adidas, rather than universities sponsored by rival athletic apparel companies. To that end, the complaints have charged various alleged participants in the schemes with one or more counts of bribery, conspiracy, solicitation of bribes, payment of bribes, honest services fraud conspiracy, honest services fraud, wire fraud conspiracy, wire fraud, Travel Act conspiracy, money laundering conspiracy and money laundering.

The DOJ's press release and the complaints that have been unsealed are available [here](#). For more information, see *The New York Times*' coverage [here](#), *The Wall Street Journal*'s coverage [here](#), *The Washington Post*'s coverage [here](#), and *Law360*'s coverage [here](#).

Telia Company AB Agrees to Pay More Than \$965 Million to Resolve Global Foreign Bribery Investigations

On September 21, 2017, Stockholm-based Telia Company AB ("Telia" and f/k/a Teliasonera AB), an international telecommunications company and its Uzbekistan subsidiary, Coscom LLC ("Coscom"), entered into a global foreign bribery resolution concluding investigations by the DOJ, the SEC, and the Public Prosecution Service of the Netherlands (Openbaar Ministerie or OM).

According to the resolutions, from between 2007 and 2010, Telia and Coscom paid approximately \$331 million in bribes to an Uzbek government official who was a close relative of a high-ranking government official and had influence over the Uzbek governmental body that regulated the telecom industry. The payments were made through shell companies that Telia and Coscom management knew were beneficially owned by the foreign official, and the payments were made to facilitate Telia's entry into the Uzbek telecom market.

Telia agreed to pay a total criminal penalty of \$274,603,972 to the United States, including a \$500,000 criminal fine and \$40 million in criminal forfeiture that Telia agreed to pay on behalf of Coscom. Telia also agreed to pay a total of \$457,169,977 in disgorgement of profits and prejudgment interest to the SEC and to pay the OM a criminal penalty of \$274 million for a total criminal penalty of \$458,603,972. Because each authority agreed to credit certain of the penalties paid, the total amount paid to effect a resolution of the investigations is

The DOJ's press release, Deferred Prosecution Agreement and Plea Agreement are available [here](#). The SEC's press release and Order Instituting Cease-and-Desist Proceedings are available [here](#). The OM's press release and Statement of Facts are available [here](#). For more information, see *The New York Times'* coverage [here](#), *The Wall Street Journal's* coverage [here](#), *the FCPA Blog's* coverage [here](#) and *Law360's* coverage [here](#).

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EXPORT CONTROL, SANCTIONS AND CUSTOMS ENFORCEMENT

DDTC Announces Consent Agreement in Relation to the Release of ITAR Technical Data

On September 12, 2017, the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) announced a consent agreement with New Jersey-based Bright Lights USA, Inc. ("Bright Lights"), on charges of violating the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR) in connection with misclassification of parts, unauthorized exports, and failure to maintain records. According to the charging letter, the company's chief engineer regularly sent "redacted" versions of technical drawings to outside vendors for products the company intended to outsource. To create this "redacted" version, the chief engineer apparently removed export control language from technical drawings in the mistaken belief that this satisfied ITAR requirements. As a result of this practice, ITAR-controlled technical data was exported to China and India. In addition, a poor understanding of Export Control Reform at the company resulted in the misclassification of a number of items, and the company also did not observe certain ITAR recordkeeping requirements.

Bright Lights settled with DDTC and agreed to pay \$400,000 in civil penalties. In evaluating mitigating factors, DDTC considered that Bright Lights (a) submitted two voluntary disclosures acknowledging the charged conduct and other potential violations; (b) cooperated with DDTC's review of the disclosed incidents and signed multiple tolling agreements; (c) provided information suggesting that the violations were not willful in nature; and (d) has made significant improvements to its export compliance program, reducing the likelihood of future violations. Aggravating factors that DDTC considered included (a) the central role of a single individual, the chief engineer, who carried a prior AECA conviction; (b) significant ITAR training and compliance program deficiencies that directly contributed to the violations; and (c) the unauthorized export of technical data to proscribed destinations.

For more information, see the Bright Lights [charging letter](#), [consent agreement](#), or [order](#).

DOJ Joins False Claims Act Suit Against U.K. Retailer for Splitting Shipments into Low Value "De Minimis" Shipments to Avoid U.S. Customs Duties

The DOJ joined a whistleblower case against a U.K. retailer Pure Collection Ltd. for allegedly evading customs duties by splitting large orders into multiple lower-value shipments in order to qualify the shipments as "Section 321" or "de minimis" shipments that were exempt from customs duties and taxes. The de minimis exception applies to low-value shipments under \$800 (previously \$200), provided that the shipment is not part of one single order or contract that is sent separately for the express purpose of securing free entry. The DOJ's complaint alleges that Pure Collection Ltd., a knitwear retailer specializing in the sale of cashmere, systematically falsified shipping and payment records for the shipments in order to make it appear that the packages were part of separate orders. The whistleblower is a former Pure Collection employee who alleges that he was trained to systematically split customer's large orders to avoid paying U.S. customs duties. According to the complaint, Pure Collection also advertised on its website that "we do our utmost to prevent customs fees" and guaranteed reimbursement of any customs fees that are levied. The U.S. government seeks triple damages and civil penalties from Pure Collection for the customs duties that it avoided from 2010 through 2017.

Chief Executive Officer of International Metallurgical Company Sentenced to 57 Months for Conspiring to Export Specialty Metals to Iran

On September 7, 2017, the U.S. Attorney's Office for the Eastern District of New York and DOJ-NSD announced that Erdal Kuyumcu, a U.S. citizen, was sentenced to 57 months in prison for International Emergency Economic Powers Act (IEEPA) violations in connection with exporting specialty metals from the United States to Iran.

According to the allegations in the press release, Kuyumcu, CEO of New York-based Global Metallurgy LLC, conspired to export from a U.S.-based supplier to Iran a metallic powder primarily composed of cobalt and nickel. The powder had potential military and nuclear applications, and Kuyumcu and others intended to ship more than 1,000 pounds of the material to Iran via Turkey to avoid detection by the U.S. government. Kuyumcu had pleaded guilty to the conspiracy on June 14, 2016.

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

Former Turkish Minister of the Economy, Bank Manager and Seven Others Charged with Conspiring to Evade U.S. Sanctions Against Iran and Other Offenses

On September 6, 2017, the U.S. Attorney's Office for the Southern District of New York announced charges against nine Turkish and Iranian nationals, including Mehmet Zafer Caglayan, former Turkish Minister of the Economy, and Suleyman Aslan, former general manager of a Turkish government-owned bank. The charges were filed in connection with a scheme in which the defendants used Aslan's bank to supply currency and gold to the government of Iran, Iranian entities, and other parties on the Specially Designated National List (SDN List), in violation of U.S. sanctions restrictions and the IEEPA. According to the announcement, Caglayan received tens of millions of dollars' worth of bribes in cash and jewelry to provide the services to the government of Iran and then conceal those services from the U.S. government. As a result, U.S. banks unknowingly processed international financial transactions in violation of the IEEPA.

Each defendant 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. The conspiracy to defraud the United States count carries a maximum term of imprisonment of five years. The conspiracy to violate the IEEPA, money laundering conspiracy, and substantive money laundering counts each carry a maximum term of imprisonment of 20 years. The bank fraud counts each carry a maximum term of imprisonment of 30 years.

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

Chinese National Sentenced to Three Years for Attempting to Illegally Export High-Grade Carbon Fiber to China

On August 31, 2017, the U.S. Attorney's Office for the Southern District of New York and the National Security Division of the Department of Justice announced that Fuyi Sun had been sentenced to three years in prison for violating the IEEPA in connection with a conspiracy to smuggle high-grade carbon fiber to China.

According to the allegations in the press release, from approximately 2011 to 2016, Sun had attempted to acquire high-grade M60 carbon fiber, which is used in aerospace technologies, unmanned aerial vehicles, and other defense applications. In furtherance of this scheme, Sun had communicated for years with a distributor of carbon fiber that was actually an undercover entity created by the U.S. government. Sun repeatedly suggested ways to avoid detection by authorities, such as the use of code words and submission of fraudulent customs documents. Sun also repeatedly suggested that the Chinese military was the ultimate end user for the carbon fiber, and he claimed to have personally worked on the Chinese missile program. He was ultimately arrested after agreeing to purchase two cases of the carbon fiber for export to China without a license.

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

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EXPORT CONTROL, SANCTIONS AND CUSTOMS DEVELOPMENTS

CBP Releases Information on Nonprocurement Suspension and Debarment for Trade Law Violations

On September 19, 2017, U.S. Customs and Border Protection (CBP) announced that it has incorporated nonprocurement suspension and debarment (S&D) procedures into its trade enforcement process. S&D actions prevent companies and individuals from participating in government contracts, subcontracts, loans, grants and other assistance programs, and the effect of S&D is government-wide. All suspended or debarred entities are listed on the General Services Administration's System for Award Management.

Suspension, which is a temporary exclusion from taking part in covered transactions, will occur when immediate action is necessary to protect the U.S. government's interest. Suspensions which can last up to one year and "may be based on indictments, information or adequate evidence involving crimes, fraud, embezzlement, theft, forgery, bribery, poor performance, non-performance, or false statements." In contrast, debarment is a final decision that renders an individual or organization ineligible to receive or participate in nonprocurement covered transactions. Notably, CBP also stated that it could take an S&D action for an importer's failure to pay a single substantial debt or a number of outstanding debts owed to CBP (e.g., unpaid bills or penalties). CBP defines nonprocurement covered transactions as "any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements, and any other nonprocurement transactions between a Federal agency and a person."

CBP's announcement also outlines its S&D procedures, in which all cases for S&D actions will be referred to a CBP Suspension and Debarment Official, who will initiate an administrative proceeding and make a final decision.

For additional information, see the CBP [announcement](#) and [CBP's Suspension and Debarment Frequently Asked Questions](#).

Trump Administration Significantly Expands Sanctions Against North Korea

On September 21, 2017, the White House announced additional sanctions against North Korea, following a new round of sanctions imposed by the United Nations on September 11 and an escalation of U.S. sanctions previously enacted into law in August. The new sanctions, imposed through Executive Order 13810, come amidst rising political tensions between the United States and North Korea, over Pyongyang's development of its nuclear program and continued testing of ballistic missiles in the region. According to the White House, the sanctions aim to cut off all means used by North Korea to earn, access and transfer funds for its weapons of mass destruction programs. Notably, while the new sanctions target North Korea, they have an extraterritorial focus that will impact individuals and entities in countries that continue to do business with Pyongyang, including trading partners in China, Russia and India.

For details and analysis, please see the Akin Gump [Client Alert](#) and OFAC [web notice](#).

CFIUS's 2015 Annual Report and Published 2016 Data Demonstrate Uptick in Review Activity and Scrutiny

On September 19, 2017, the Committee on Foreign Investment in the United States (CFIUS) released its annual report (Report) to Congress. One day later, CFIUS also released more limited data on foreign investment activity in 2016 (2016 Table). The Report summarizes CFIUS activities in 2015, the most recent year for which complete data on foreign investment activity is available. The Report is noteworthy for the continuation of trends it presents from prior years – most notably, a high volume of covered transactions subject to review and the domination of Chinese investment. The Report and the 2016 Table also reveal CFIUS's rigor in addressing potential national security risk by escalating its review of transactions to second-stage investigation, making use of mitigation agreements and articulating new grounds for national security concerns.

For additional information and analysis, please see the Akin Gump [Client Alert](#).

President Trump Blocks Chinese-Funded Acquisition of U.S. Semiconductor Company

On September 13, President Trump issued an order prohibiting the proposed \$1.3 billion acquisition of Lattice Semiconductor Corporation by Canyon Bridge Capital Partners, Inc., consistent with the recommendation CFIUS. This decision follows CFIUS's 10-month review of the deal in which it identified national security concerns associated with the proposed transaction that it could not resolve through mitigation with the parties. The order stated that the President found credible evidence that Canyon Bridge "might take action that threatens to impair the national security of the United States." This is the first time that President Trump has formally blocked a transaction under the CFIUS statute and only the fourth time that any president has done so.

For additional details and analysis, please see the Akin Gump [Client Alert](#).

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WRITING AND SPEAKING ENGAGEMENTS

On Monday, October 2, counsel [Kimberly Myers](#) will speak on "Higher Education After Export Control Reform" at the Export Compliance Training Institute's University Export Controls Seminar in Columbus, OH.

On Wednesday, October 11, partner [Jasper Helder](#) will moderate the panel, "Update on the Reform of EU Export Controls on Dual-Use Goods and How European Based Companies will Need to Adapt their Current Procedures." [Chiara Klau](#) will speak on the panel "Risk Assessment of Products Entering Embargoed Countries" at C5's Advanced Forum on Global Export Controls in Amsterdam, Netherlands.

On Friday, October 13, partner [Kevin Wolf](#) will speak on "Practicing Law in an Uncertain and Unpredictable Washington, D.C." at the 22nd Annual Law Firm Leaders Forum in New York, NY.

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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Contact Information

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

Information for lawyers in the global investigations and compliance practice can be found [here](#).

The executive editors of Red Notice are [Paul W. Butler](#) at (pbutler@akingump.com) and [Christian Davis](#)

[\(chdavis@akingump.com\)](mailto:chdavis@akingump.com).

The "Anticorruption Developments" section of Red Notice is edited by [Stanley Woodward](#).

The "Export Control, Sanctions and Customs Developments and Enforcement" sections are edited by [Suzanne Kane](#) and [Johann Strauss](#).

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