

International Trade Enforcement Roundup

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You are reading the **September 2023 Update** of the Bass, Berry & Sims Enforcement Roundup, where we bring notable enforcement actions, policy changes, interesting news articles, and a bit of our insight to your inbox.

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Overview

- ◆ September saw a number of enforcement actions involving **Iran**. First, the Office of Foreign Assets Control (OFAC) announced separate settlements with 3M and Emigrant Bank for violations of the Iranian Transactions and Sanctions Regulations (ITSR). In addition, a Virginia man was convicted of violating the International Emergency Economic Powers Act (IEEPA) and ITSR when he sent construction equipment to Iran. And the Department of Justice (DOJ) announced its first criminal resolution involving the illicit sale and transport of Iranian oil.
- ◆ September also saw noteworthy **Russia-related** enforcement activity. First, Maxim Marchenko was charged with seven criminal counts for allegedly procuring U.S.-origin dual-use microelectronics for the Russian war effort. Second, Sergey Karpushkin pleaded guilty after facilitating transactions with a Specially Designated Person (SDN). Lastly, the Department of Commerce's Bureau of Industry and Security (BIS) added 28 entities to the Entity List.
- ◆ Two noteworthy **Foreign Corrupt Practices Act (FCPA)** settlements were announced in September. First, U.S. chemical manufacturer Albemarle paid over \$200 million to settle FCPA allegations with the DOJ and Securities and Exchange Commission (SEC). Second, Clear Channel Outdoor, a Texas media company, agreed to pay more than \$26 million to end an investigation into improper payments to Chinese government officials.
- ◆ BIS also announced an **Anti-Boycott** action in September involving Pratt & Whitney, which agreed to a boycott request in a Purchase Order (PO) but failed to report it.
- ◆ September saw a number of **enforcement policy updates** as well. The United States and its 'Five Eye' partners issued guidance related to red flags and risk areas, and BIS issued guidance to help companies prevent Russian diversion attempts. Lastly, the Department of Homeland Security (DHS) added three new entities to the Uyghur Forced Labor Prevention Act's (UFLPA) Entity List.

Iran

OFAC Settles with 3M for \$9,618,477 Related to Violations of Iranian Sanctions (OFAC Action)

Those involved. 3M Company, a St. Paul, Minnesota-based global manufacturing company.

Charges and penalties. 54 apparent violations of OFAC sanctions on Iran (agreed to pay \$9,618,477).

What happened? On September 21, OFAC announced a settlement with 3M to resolve 54 apparent violations of the ITSR. Between 2016 and 2018, a Swiss 3M subsidiary sold reflective license plate sheeting to Bonyad Taavon Naja (BTN), an entity controlled by Iranian law enforcement authorities. The Swiss subsidiary shipped reflective sheeting to a German reseller to produce blank license plates for export to “transport authorities in Iran.” However, the German company notified 3M that it decided to simply resell the sheeting to BTN. Notwithstanding the change or potential issues identified during due diligence, the subsidiary did not notify the 3M trade compliance team. After the 3M compliance team became aware of the transactions, the company voluntarily disclosed the matter to OFAC.

In conjunction with the indictment, BIS issued a Temporary Denial Order (TDO) for Petrov, LLC Electrocom VPK (Petrov’s employer) and Astraferos Technokosmos LTD (the Cyprus shell company). BIS also issued TDOs against two other individuals and companies. The TDOs suspend each party’s ability to export, receive, or participate in virtually any activity involving items subject to the EAR.

The press release can be found [here](#). The settlement agreement can be found [here](#).

Notably. It is important to remember that U.S. sanctions on Iran extend to conduct by non-U.S. subsidiaries of U.S. companies. Sanctions also extend to action taken by U.S. persons employed by a non-U.S. company.

This action also serves as a reminder of how long it may take to resolve an OFAC matter. With only a five-year statute of limitations for OFAC violations, the agency often requests that companies waive the statute of limitations to ensure a complete investigation.

OFAC Settles with Emigrant Bank for \$31,867.90 Related to Violations of Iran Sanctions (OFAC Action)

Those involved. Emigrant Bank, a New York-based bank.

Charges and penalties. 30 apparent violations of OFAC sanctions on Iran (agreed to pay \$31,867.90).

What happened? On September 21, OFAC announced a settlement with Emigrant Bank for improperly maintaining a Certificate of Deposit (DC) account for two Iranians since 1995. The bank processed 30 transactions, totaling approximately \$90,000, involving the account between 2017 and 2021. In 2016, the accountholders requested a wire transfer from a U.S. resident, triggering the bank’s screening system, but Emigrant decided the transaction was authorized as a “personal remittance.” Emigrant was subsequently alerted to the fact that the accountholder’s country of residence was Iran, yet Emigrant again dismissed the warning, relying on the past guidance. Ultimately, in 2021, bank management became aware of the Iranian accountholders, initiated an investigation, and voluntarily disclosed the matter to OFAC.

The press release can be found [here](#).

Notably. U.S. sanctions on Iran prohibit U.S. persons and U.S. financial institutions from providing certain services to Iran. This prohibition expressly extends to servicing Iranian financial accounts. While personal remittances under certain conditions are authorized under the ITSR, they cannot be deposited or credited to an Iranian account.

Man Convicted of Exporting Equipment to Iran in violation of U.S. Sanctions (DOJ Action)

Those involved. Jalal Hajavi, a Virginia resident and owner of Florida-based JSH Heavy Construction.

Charges and penalties. Three Counts of Violating the IEEPA (maximum of 20 years in prison for each count) and One Count of Smuggling Goods from the United States (maximum of 10 years in prison).

What happened? On September 14, Hajavi was convicted by a federal jury of conspiring to violate the IEEPA and the ITSR and smuggling goods from the United States. According to DOJ, between 2013 and 2016, Hajavi received approximately \$6 million to procure construction equipment from U.S. and Canadian auctions for shipment to Iran. Hajavi falsified shipping documents by claiming the United Arab Emirates (UAE) was the final destination for the equipment. The sentencing hearing is scheduled for December.

The press release can be found [here](#).

Notably. The action should provide a reminder for individuals that violations of U.S. sanctions programs can result in substantial criminal penalties, including long prison sentences.

U.S. Government Seizes Nearly One Million Barrels of Iranian Crude Oil (DOJ Action)

Those involved. Suez Rajan Limited, a Marshall Islands-based company and owner of Suez Rajan, an oil tanker.

Charges and penalties. One count of violating the IEEPA (maximum of 20 years in prison).

What happened? On September 8, the DOJ announced its first criminal resolution involving the illicit sale and transport of Iranian oil. In April, Suez Rajan Limited pleaded guilty to conspiring to violate the IEEPA and the U.S. District Court sentenced the company to three years of corporate probation and a \$2.5 million fine. The oil seized in connection with this matter is now subject to a civil forfeiture proceeding.

The press release can be found [here](#).

Notably. This is a rare enforcement action given that establishing U.S. jurisdiction over Iranian-origin oil is normally difficult. In this case, jurisdiction was predicated on the fact that Suez Rajan was financed by an affiliate of a California firm. Given the complex flow of global finance, U.S. asset managers and private equity firms must implement appropriate compliance infrastructure to ensure they understand the ultimate ownership of their assets.

Russia

Commerce Adds 28 Entities to Entity List for Conspiracy to Violate U.S. Export Controls and Other Activities Contrary to U.S. National Security Interests (BIS Action)

Catch All Additions. On September 25, BIS added 28 entities to the Entity List (EL). These additions included 11 entities based in China, five in Russia, five in Pakistan, and others in Finland, Oman, Germany, and the UAE. Most notably, nine of these entities were added for their alleged involvement in supporting the production of unmanned aerial vehicles (UAVs) for Russia. Other entities were designated for supporting Iran's weapons of mass destruction and UAV programs, providing support to Houthi forces, and procuring items apparently in furtherance of Chinese military research.

The press release can be found [here](#). The final rule can be found [here](#).

Notably. As a general matter, a license is required to export, re-export, or transfer nearly any U.S.-origin item to a party on the EL. With BIS constantly adding entities to the list, it is crucial companies consistently cross-check their transactions with the updated list.

Russian Money Launderer Arrested for Illicitly Procuring Large Quantities of U.S.-Manufactured Dual-Use Military Grade Microelectronics for Russian Elites (DOJ Action)

Those involved. Maxim Marchenko, a Russian citizen residing in Hong Kong.

Charges and penalties. One Count of Conspiracy to Defraud the United States (maximum of five years in prison); One Count of Conspiracy to Commit Money Laundering (maximum of 20 years in prison); One Count of Conspiracy to Smuggle Goods from the United States (maximum of five years in prison); One Count of Money Laundering (maximum of 20 years in prison); One Count of Smuggling Goods from the United States (maximum of 10 years in prison); One Count of Conspiracy to Commit Wire Fraud (maximum of 20 years in prison); and One Count of Wire Fraud (maximum of 20 years in prison).

What happened? On September 17, Marchenko was charged with seven criminal counts for allegedly procuring U.S.-origin dual-use microelectronics for the Russian war effort. While residing in Hong Kong, Marchenko used various Hong Kong-based shell companies to obtain U.S.-origin military-grade microelectronics by concealing the ultimate destination from U.S. suppliers and regulators. Marchenko, with the help of two co-conspirators, assured U.S. distributors that the microelectronics—largely OLED micro displays—would be used in China and other countries for use in electron microscopes. In fact, between May 2022 and August 2023, Marchenko facilitated the export of more than \$1.6 million in items to Russia for use in rifle scopes, night vision goggles, thermal optics, and more. Marchenko has been arrested and extradited to the U.S.

The press release can be found [here](#).

Notably. Hong Kong remains a common transshipment point for U.S.-origin products to Belarus and Russia. A March 2023 [Tri-Seal Compliance note](#) issued by the Departments of Commerce, Treasury and Justice emphasizes that it is a red flag when a transaction partner wants to route purchases through certain transshipment points like Hong Kong. Due diligence on transactions and transaction partners is critical to protect against diversion.

Wide-Ranging New Sanctions Target Russian Military-Linked Parties (OFAC Action)

Broad sanctions imposed. On September 14, OFAC announced that it was designating more than 100 Russian elites, entities in Russia's industrial base and financial institutions. Notably, five Turkish companies and a Finnish-based procurement network were among the parties designated for helping Russia evade sanctions. As a result of these designations, U.S. persons holding property of any of these entities must block and report that property to OFAC. Additionally, all transactions by U.S. persons and persons in the United States involving the property of the designated entities are prohibited. In conjunction with this OFAC action, the Department of State also designated more than 80 entities.

The OFAC press release can be found [here](#). The Department of State press release can be found [here](#).

Notably. OFAC continues its concerted effort to root out entities and individuals engaged in sanctions evasion. This effort is punctuated by the recent additions of the Turkish and Finnish entities. Additional designations and sanctions are likely.

Foreign Corrupt Practices Act

Albemarle to Pay Over \$218 Million to Resolve FCPA Investigation (DOJ Action)

Those involved. Albemarle Corporation, a North Carolina chemicals manufacturing company.

Charges and penalties. DOJ: Violation of the anti-bribery provisions of the FCPA; SEC: Violations of the antibribery provisions, books and records provision; and internal accounting provisions of the FCPA (entered into a non-prosecution agreement (NPA) agreeing to pay \$103.6 million in disgorgement and prejudgment interest)

What happened? On September 29, the DOJ announced Albemarle Corporation agreed to pay over \$218 million to resolve DOJ and SEC investigations into potential FCPA violations. Albemarle admitted, as part of the NPA, that it had used third parties to bribe government officials affiliated with state-owned oil refineries in India, Indonesia and Vietnam to obtain and retain chemical catalyst business.

The SEC ordered Albemarle to pay disgorgement of \$81,856,863 and prejudgment interest of \$21,761,447 for a total of \$103,618,310. In determining the penalty, the SEC considered Albemarle's self-disclosure of its potential FCPA violations following internal investigations, cooperation, and remedial efforts - including terminating culpable personnel, exercising third-party audit rights, strengthening internal accounting controls, and hiring a dedicated compliance officer.

The DOJ levied an additional \$98 million criminal monetary penalty and \$98.5 million administrative forfeiture against the company but credited around \$82 million of the forfeiture against disgorgement required by the SEC order.

The press release can be found [here](#). The NPA can be found [here](#).

Notably. This action highlights the DOJ's use of the March 2023 Compensation Incentives and Clawbacks Pilot Program, which incentivizes companies to "clawback" employee compensation from offending employees by rewarding them with reduced fines. We wrote about the pilot program in the [March version](#) of our International Trade Enforcement Roundup. Here, during the course of its internal investigation, Albemarle withheld \$763,453 in employee bonuses to employees 1) suspected of wrongdoing and 2) with supervisory authority over the offending employees. The penalty paid by Albemarle reflected the amount withheld in bonuses.

Simply put, companies need to consider compliance-centered compensation arrangements for personnel. The public release of information about withheld bonuses should be an effective means by which to ensure that employees understand the monetary ramifications of compliance failures.

Clear Channel Outdoor Ordered to Pay \$26 Million in FCPA Violations (SEC Action)

Those involved. Clear Channel Outdoor Holdings Inc., a Texas-based media company.

Charges with penalties. Violations of the antibribery, recordkeeping, and internal accounting controls provisions of the FCPA (agreed to pay over \$26 million).

What happened? Clear Channel Outdoor's majority-owned subsidiary, Clear Media, bribed Chinese government officials to procure contracts for selling advertisements for outdoor structures like billboards and bus stops. According to the SEC, improper payments were recorded as entertainment, cleaning and maintenance, and "customer development" expenses. Bribes were paid using gift cards, golf clubs, and other gifts. As noted by the Chief of SEC's Enforcement Division's FCPA Unit, "[d]espite repeated red flags raised by its internal auditors, Clear Channel Outdoor failed to address the deficient internal accounting controls that allowed Clear Media to continue these improper payments for many years." Pursuant to the settlement, Clear Channel Outdoor has been ordered to pay a civil monetary penalty of \$6 million, disgorge \$16.4 million in ill-gotten gains, and pay almost \$4 million in prejudgment interest.

The press release can be found [here](#). The administrative order can be found [here](#).

Notably. Clear Channel's internal auditors reportedly raised concerns related to bribery risks posed by their Chinese subsidiary's lack of internal accounting controls and a weak compliance program; however, Clear Channel failed to remediate the issues. It is essential that internal audit personnel are a key part of the compliance team since the auditors often have the most visibility into potential compliance weaknesses.

In addition, notwithstanding the apparent internal controls weaknesses, the DOJ declined to prosecute the matter. The SEC continues to move forward with matters even when the DOJ concludes that there is not a clear case of corrupt payments.

Anti-Boycott Actions

DBIS Imposes Penalty Against Pratt & Whitney Component Solutions to Resolve 13 Alleged Violations of the Anti-boycott Regulations (BIS Action)

Those involved. Pratt & Whitney Component Solutions, Inc. (Pratt & Whitney).

Charges and penalties. 13 apparent violations of the anti-boycott provisions of the Export Administration Regulations (EAR) (civil penalty of \$48,750 imposed).

What happened? On September 7, Pratt & Whitney paid a \$48,750 civil penalty to BIS, resolving 13 apparent violations of the agency's anti-boycott provisions of the EAR. Between 2019 and 2020, Pratt & Whitney received 13 "requests" from Qatar Airways to refrain from importing Israeli-origin products. However, the company failed to timely report the "requests" to the U.S. Department of Commerce in accordance with Section 760.5 of the EAR. Pratt & Whitney ultimately self-disclosed the conduct in accordance with Section 764.8 of the regulations.

The press release can be found [here](#). The Order, Settlement Agreement and Proposed Charging Letter can be found [here](#).

Notably. The Settlement Agreement references certain POs that Pratt & Whitney entered into with Qatar Airways. Companies must ensure that personnel involved in reviewing POs, and other contracts and agreements, understand the language that can trigger U.S. anti-boycott regulations. Training for personnel is key to protecting the company against violations.

Enforcement Policy Changes

United States-Australia-Canada-New Zealand-United Kingdom Release Joint Guidance on Countering Russia Evasion (BIS Action)

Enhanced Cooperation. On September 26, the governments of the United States, Australia, Canada, New Zealand, and the United Kingdom - commonly known as the Five Eyes Alliance (FVEY) - issued joint guidance identifying particular items critical to Russian weapons systems and pressing industry to help prevent Russian diversion efforts. The guidance is borne from a June 2023 agreement between the partners to "formally coordinate" export enforcement. We discussed the commitment in our June 2023 enforcement [roundup](#).

The September guidance announces an agreement "to prioritize controlled items in certain Harmonized System (HS) codes that Russia is using in its weapons systems." The codes are divided into four tiers: 1) integrated circuits; 2) electronics items related to wireless communication, satellite-based radio navigation, and passive electronic components; 3) electronic and non-electronic items; and 4) manufacturing, production, and quality testing equipment of electric components and circuits.

The guidance also presses exporters “to conduct additional due diligence when encountering one of the listed HS codes to ensure end user legitimacy and mitigate attempts to ... export controls and/or sanctions.” In addition, the guidance identifies three patterns that should raise diversion concerns: the company never received exports prior to February 24, 2022, the company received exports that did not include any of the tier one and tier two HS codes prior to February 2022, or the company saw a significant spike in exports after February 2022.

Additional red flags include requests for defense or dual-use products from a company incorporated after February 2022; an existing customer that is now exporting or re-exporting items to a known transshipment point; and a customer who lacks or refuses to furnish details on bank, shippers, or end users.

The press release can be found [here](#).

Notably. Increased cooperation between FVEY countries may drive additional enforcement. Guidance of this kind should be taken seriously by companies and implemented into compliance programs wherever applicable.

Bureau of Industry and Security Issues Practice Guidance to Help Prevent High-Priority Items from Being Diverted to Russia (BIS Action)

Best Practices. On September 28, BIS issued best practice guidance as an aid for industry to consult to better comply with existing export controls. The guidance references the September 26 guidance issued by FVEY and lists 45 HS codes it has identified as “controlled items at heightened risk of being diverted illegally to Russia.” In addition, BIS recommends exporters seek assurances for transactions involving nine of the highest priority items—certain types of electronic integrated circuits, radar apparatuses, fixed capacitors, electrical parts of machinery or apparatuses, and machines used for the reception, conversion and transmission or regeneration of voice, images, or other data, including switching and routing apparatuses. The corresponding HS codes are 8542.31, 8542.32, 8542.33, 8542.39, 8517.62, 8526.91, 8532.21, 8532.24, and 8548.00. The BIS guidance even provides a sample certification attachment that exporters can require buyers to complete prior to fulfilling purchase orders.

The press release can be found [here](#).

Notably. The BIS guidance continues BIS efforts to prevent the diversion of U.S.-origin technologies to Russia. Given the focus, companies should heed BIS guidance and focus on compliance related to transactions involving certain known transshipment points.

DHS Designates Three Additional PRC-Based Companies as a Result of Forced Labor Enforcement (DHS Action)

New Additions. On September 26, DHS announced the addition of three new entities to the UFLPA entity list. The interagency Forced Labor Enforcement Task Force (FLETf) agreed to add Xinjiang Zhongtai Group Co. Ltd., Xinjiang Tianshan Wool Textile Co. Ltd., and Xinjiang Tianmian Foundation Textile Co. Interestingly, all three entities operate in the textile industry. As a result of the additions, all goods produced by these companies will be restricted from entering the United States unless the importer can prove the imported goods were not produced in whole or in part with forced labor. The additions bring the list to 27 total companies.

The press release can be found [here](#).

Notably. The increased use of the UFLPA entity list is a welcome sign for many importers who have long urged DHS to provide better clarity to its enforcement approach and predictability in the process.

International Trade Practice Group

The Bass, Berry & Sims International Trade Practice Group helps clients navigate the complex regulations associated with a global marketplace. Our team is experienced in guiding clients through challenging issues related to economic sanctions (OFAC), exports (DDTC and the ITAR; BIS and the EAR), imports (CBP), antibribery (DOJ and SEC), anti-boycott regulations (OAC and Treasury), and the Committee on Foreign Investment in the United States (CFIUS). Our work in this area has been recognized in leading legal industry outlets, including Chambers USA, whose research revealed that “Bass, Berry & Sims represents a range of clients in export controls and economic sanctions matters. The team is experienced in handling EAR, OFAC and ITAR issues.” A client added, “Bass, Berry & Sims is very responsive and service-oriented.” (from *Chambers USA*). Learn more [here](#).

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