

International Trade Enforcement Roundup

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You are reading the **March 2024 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

- ◆ March saw one major enforcement action related to **Russia**. Oleg Chistyakov, a Latvian national, was arrested and charged for allegedly exporting U.S.-origin aircraft technology to Russia.
- ◆ There were notable actions involving the **International Traffic in Arms Regulations (ITAR)**. First, a U.S. Army Intelligence Analyst was charged for illegally exporting national defense information to China. Second, a California man was charged with attempting to export defense articles to Oman.
- ◆ March also saw a notable **sanctions enforcement action** involving EFG International AG, a Switzerland-based bank, which agreed to pay almost \$4 million to settle allegations it had violated U.S. sanctions programs administered by the U.S. Treasury Department, Office of Foreign Assets Control (OFAC).
- ◆ In addition, there were two notable **Foreign Corrupt Practices Act (FCPA) enforcement actions** in March. First, Gunvor S.A., a Switzerland-based international commodities company, pleaded guilty and agreed to pay more than \$650 million to resolve a Department of Justice (DOJ) investigation. And the former Finance Director of Stericycle—a company that was itself [targeted](#) by the DOJ in 2022—was indicted for his role in bribing government officials in Argentina, Brazil, and Mexico.
- ◆ Lastly, the U.S. government issued a new rule expanding existing end-user requirements and a tri-seal compliance note that further underscore the extent to which **U.S. export controls and sanctions can apply to non-U.S. actors**.

Russia

Latvian Broker Arrested for Allegedly Smuggling Advanced U.S. Aircraft Technology to Russia (DOJ Action)

Those involved. Oleg Chistyakov, Latvian national.

Charges and penalties. One Count of Conspiracy (maximum of five years in prison); Six Counts of Exporting Goods to Russia (maximum of 20 years in prison for each count); Six Counts of Submitting False Export Information (maximum of 20 years in prison for each count); Nine Counts of Smuggling Goods from the United States (maximum of 10 years in prison for each count); One Count of Conspiracy to Commit International Laundering (maximum of 20 years in prison for each count); and Two Counts of International Money Laundering (maximum of three years in prison for each count).

What happened? Chistyakov was charged with committing multiple crimes stemming from a plot to illegally sell and export U.S. aircraft technology to Russia. Chistyakov allegedly worked alongside two U.S. nationals (who, as we reported [here](#), were indicted in March 2023) and used a U.S. company, KanRus Trading Company Inc., to evade U.S. export laws. Chistyakov and his co-conspirators developed false invoices, trans-shipped items through third-countries such as Germany and the United Arab Emirates, and used intermediary companies to conceal their illegal activities. Chistyakov acted as the sales agent, soliciting quotes, negotiating prices, and facilitating payments between the United States and Russian customers.

Chistyakov was arrested in Latvia on March 19 and is awaiting extradition to the United States.

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

Notably. Chistyakov's arrest highlights the continued success of Task Force KleptoCapture. The task force is an inter-agency effort involving the Federal Bureau of Investigations (FBI), U.S. Marshals Service, Department of Homeland Security's Homeland Security Investigations (HSI), IRS-Criminal Investigation, and U.S. Postal Inspection Service; its work has led to the arrest and extradition of several foreign persons engaged in illegal exports of U.S.-origin dual-use items to Russia and the confiscation of numerous high-value Russian assets. As the Assistant Secretary of Commerce said, "It doesn't matter if you're in Kansas or in Latvia - if you violate American law, you risk facing American justice."

In addition, the action highlights the important role countries on the front lines play in ensuring U.S. export control laws are enforced. "Oleg Chistyakov's arrest was only possible due to the assistance and cooperation of authorities in Latvia," said U.S. Attorney Kate Brubacher.

The Arms Export Control Act

U.S. Army Intelligence Analyst Arrested and Charged with Conspiracy to Obtain and Disclose National Defense Information, Export Control Violations, and Bribery (DOJ Action)

Those involved. Korbein Schultz, a U.S. Army soldier.

Charges and penalties. One Count of Conspiracy to Gather, Transmit, or Lose Defense Information (maximum of 10 years in prison); Three Counts of Unlawful Export of Defense Articles to China (maximum of 20 years in prison); One Count of Conspiracy to Unlawfully Export Defense Articles to China (maximum of 20 years in prison); One Count of Bribery of a Public Official (maximum of 15 years in prison).

What happened? On March 7, Schultz, a 24-year-old Army Intelligence Analyst, was arrested and charged for allegedly providing national defense information to a Chinese individual in return for approximately \$42,000. Since June 2022, Schultz allegedly worked with an individual identified as Conspirator A to transmit ITAR-controlled information related to the F-22 aircraft, HH-60W helicopter, and the intercontinental ballistic missile program. Conspirator A also tasked Schultz with collecting information related to potential plans in the event Taiwan came under attack, documents related to the High Mobility Artillery Rocket System (HIMARS), and confidential studies on China and other countries.

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

Notably. The alleged crimes largely center around the export of three manuals explaining techniques and procedures for the F-22 aircraft, HH-60W helicopter, and intercontinental ballistic missiles. It is crucial to remember that ITAR controls extend beyond physical weaponry to technical data related to defense articles, including in many cases operator manuals.

California Man Sentenced for Attempting to Illegally Export Firearms and Night Vision Rifle Scopes to Oman (DOJ Action)

Those involved. Fares Abdo Al Eyani, a California resident.

Charges and penalties. Conspiracy to Export Defense Articles and Attempting to Export Defense Articles in Violation of the ITAR (sentenced to 12 months and one day in prison).

What happened? On March 29, Al Eyani was sentenced to one year and one day in prison for conspiring to export arms, ammunition, and other defense articles to Oman. Al Eyani procured at least four firearms with magazines and ammunition and 44 rifle scopes and goggles with night vision capabilities as part of the scheme. He attempted to hide the weapons and optics in automobiles bound for Oman via the port of Oakland, California. Al Eyani disassembled the firearms and wrapped them in aluminum foil to conceal them from law enforcement. At no time did Al Eyani apply for or receive any required export license.

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

Notably. The HSI Unit investigated the case alongside the FBI and Customs and Border Patrol. While largely unknown, HSI plays an important role in combatting transnational criminal activity such as the illegal export of firearms – as noted above, HSI is a key component of the KleptoCapture Task Force. HSI has over 6,000 special agents worldwide and over 200 offices across the United States.

OFAC Settlement

Swiss Finance Company to Pay Almost \$4 Million for Sanctions Violations (OFAC Action)

Those involved. EFG International AG (EFG), a Switzerland-based bank.

Charges and penalties. Apparent violations of multiple sanctions programs administered by OFAC (\$3,740,442).

What happened? On March 14, OFAC announced that EFG agreed to pay almost \$4 million to settle allegations that it had violated multiple OFAC sanctions regimes after improperly processing 873 transactions amounting to more than \$30 million in value. We wrote about this enforcement action in greater detail in a March 20 [blog post](#). The press release can be found [here](#).

Former Finance Director Charged for Role in \$10 Million Foreign Bribery Scheme (DOJ Action)

Those involved. Abraham Cigarroa Cervantes, Stericycle's former finance director and Mexican national.

Charges and penalties. One Count of Conspiracy to Violate the FCPA's Anti-Bribery Provision and One Count of Conspiracy to Violate the FCPA's Books and Records Provision (maximum of five years in prison on each count).

What happened? On March 19, Cigarroa was indicted for conduct arising from a scheme to bribe government officials in Argentina, Brazil, and Mexico. Along with others, Cigarroa made bribes to secure and retain contracts for Stericycle to provide waste management services. The bribes, allegedly paid in cash, were calculated as a percentage of the underlying contract value. The indictment alleges that Cigarroa used code words to describe the bribes and recorded them in a spreadsheet separate from the official books, which were altered to reflect the bribes as "legitimate expenses." Cigarroa also allegedly submitted false Sarbanes-Oxley certifications, representing that the company's books were accurate. This indictment was borne from an [April 2022 enforcement action](#) in which Stericycle agreed to pay over \$80 million and enter a three-year deferred prosecution agreement.

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

Notably. The DOJ enforces the FCPA against both corporations and individuals. CEOs, CFOs, and other employees who engage in improper behavior in contravention of the FCPA will be held responsible and can face jail time.

Commodities Trading Company to Pay Over \$660 Million to Resolve Foreign Bribery Case (DOJ Action)

Those involved. Gunvor S.A. (Gunvor), a Switzerland-based international commodities trading company.

Charges and penalties. Conspiracy to Violate the Anti-Bribery Provisions of the FCPA (Criminal penalty of \$374,560,071 and \$287,138,444 in forfeiture of ill-gotten gains).

What happened? On March 1, Gunvor pleaded guilty and agreed to pay over \$660 million to resolve a DOJ investigation into violations of the FCPA. Between 2012 and 2020, Gunvor worked with co-conspirators to pay almost \$100 million in bribes to Ecuadorian officials. A senior official at Petroecuador, Ecuador's national oil company, was given expensive gifts, including an 18-karat gold Patek Philippe watch. In exchange, officials used state-owned entities as front companies for Gunvor, which thereby avoided competitive procurement rules and obtained favorable contractual terms. Gunvor earned more than \$384 million in profits as a result of the scheme.

The penalty amount was determined due to a number of factors. Gunvor received "credit" for its cooperation with authorities, including the prompt production of documents when requested, the presentation of information gleaned through an internal investigation, the translation of foreign language documents, and the preservation of business communications sent on employee telephones. The DOJ also credited Gunvor for engaging in timely remedial measures, including prohibiting the future use of third-party sales agents, strengthening third-party due diligence processes, adding layers of approval for counterparty payments, enhancing the compliance process for reviewing high-risk transactions, hiring more compliance personnel, committing to test and enhance the compliance program, and more. However, the DOJ also considered prior corporate misconduct, including an October 2019 resolution with Switzerland's Office of the Attorney General. Four individuals involved in the bribery scheme were also convicted.

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

Notably. The bribery scheme operated through a variety of third parties and shell companies to obscure the nature of certain payments. Companies operating internationally must be vigilant about third-party relationships, not only at the time of onboarding but throughout the relationship. Audits and other actions to oversee such relationships can help ensure that wrongdoing is identified early and before it becomes endemic.

Regulatory Changes

Commerce Rule Advances U.S. National Security by Enhancing Coordination Between Commerce Export Controls and Treasury Sanctions (BIS Action)

Expansion of end-user controls. On March 20, the Department of Commerce (DOC) Bureau of Industry and Security (BIS) promulgated a final rule adding to and expanding the existing end-user controls on those listed on OFAC's Specially Designated Nationals and Blocked Persons (SDN) list. The rule, designed as a "backstop for activities over which OFAC does not exercise jurisdiction," requires all parties exporting, re-exporting, or transferring (in-country) any Export Administration Regulations (EAR)-controlled items to obtain an OFAC license when a party listed on the OFAC SDN list is a party to the transaction. License applications under these requirements will be reviewed under a presumption of denial. While OFAC has long had secondary sanctions authority to prohibit those transactions without a U.S. nexus, the new BIS rule imposes additional, concrete requirements on foreign parties.

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

Notably. The new rule heightens the need for foreign companies to frequently and proactively review the U.S. SDN list when engaging in transactions. The SDN list changes frequently, and companies should ensure they remain compliant.

Tri-Seal Compliance Note: Obligations of Foreign-Based Persons to Comply with U.S. Sanctions and Export Control Laws (DOJ, DOC, and OFAC Action)

Foreign companies beware. On March 6, the DOJ, DOC, and OFAC published a tri-seal compliance note reminding foreign-based parties of obligations under U.S. sanctions and export control laws. For example, a foreign organization that causes a U.S. person to violate sanctions, conspires to do so, or indirectly exports services from the U.S. is subject to sanctions. BIS also administers export control laws over EAR-controlled goods, regardless of where located, because the "law follows the good." In addition, goods that incorporate more than a certain percentage of controlled U.S. content and foreign-produced products using U.S.-origin technology are governed by U.S. export control rules. Lastly, the compliance note underscores the DOJ's role in bringing criminal action for certain export and sanctions violations.

The compliance note can be found [here](#).

Notably. U.S. government agencies are increasingly issuing joint compliance notes signaling specific areas of enforcement interest. We wrote about previous compliance notes in [September 2023](#), [October 2023](#), and [December 2023](#). These public statements, along with recent enforcement actions, serve as important reminders of the long arm of U.S. export controls, sanctions, and enforcement efforts.

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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