

# International Trade Enforcement Roundup

BASS  
BERRY  
SIMS

You are reading the **August 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.

To stay up to date, subscribe to our [GovCon & Trade blog](#). If you have questions about any actions addressed in the Roundup, please contact the international trade team. We welcome your feedback and encourage you to share this newsletter. Let's jump in!

## Overview

- ◆ August saw two noteworthy **Russia-related** enforcement actions. First, a dual Russian-German national was arrested and charged with violating the Export Control Reform Act (ECRA) when he allegedly procured microelectronics for the Russian war effort. Second, Charles McGonigal, former Special Agent in Charge of the FBI New York Counterintelligence Division, pleaded guilty to violating the International Emergency Economic Powers Act (IEEPA) and to committing money laundering after providing services to a Specially Designated National (SDN).
- ◆ There were also a few **China-related** actions. 3M Company agreed to pay \$6.5 million to settle allegations it violated the Foreign Corrupt Practices Act (FCPA) when its Chinese subsidiary paid for travel and associated recreational activities of Chinese officials employed at state-owned healthcare facilities. In addition, prior to Commerce Department Secretary Raimondo's trip to China, the Bureau of Industry and Security (BIS) removed 33 entities from the Unverified List.
- ◆ A New Jersey-based construction company settled three apparent violations of **U.S. sanctions on Iran** after a whistleblower brought the violations to the attention of management. In addition, the founders of a **cryptocurrency** service company called Tornado Cash were charged with sanctions and money laundering violations related to the company's failure to implement appropriate internal controls.
- ◆ Elon Musk's SpaceX was sued by the Department of Justice (DOJ) for alleged discriminatory practices related to **hiring non-U.S. person** refugees and asylees. The case revolves around the definition of "U.S. person" in the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR).
- ◆ August also saw the announcement of a new **outbound screening mechanism** aimed at preventing U.S. capital from bolstering Chinese military capabilities. Also, the Forced Labor Enforcement Task Force (FLETF) added two new entities to the **Uyghur Forced Labor Prevention Act (UFLPA)** Entity List and updated UFLPA strategy.

# Russia

---

## *Russian-German National Arrested for Illegally Exporting to Russia Sensitive U.S.-Sourced Microelectronics with Military Applications (DOJ Action)*

**Those involved.** Arthur Petrov, a dual Russian-German national residing in Russia and Cyprus.

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

**What happened?** On August 31, an indictment was unsealed alleging that Petrov, employed by LLC Electrocom VPK, a Russian critical electronics supplier, worked with co-conspirators to illegally procure U.S.-origin microelectronics for the Russian war effort in Ukraine. Petrov used Astraferos Technokosmos LTD, a Cyprus-based shell company, to procure the products. Petrov falsely represented to U.S. manufacturers that the components were to be used in fire security systems or other commercial uses in Cyprus or another third country. The microelectronics, some of which were recovered in Ukraine, were listed on the Commerce Control List (CCL) and thus required a license for export or re-export to Russia. Petrov was arrested in Cyprus on August 26.

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

**Notably.** This action highlights the severe consequences of violating U.S. export control laws. Petrov is facing substantial time in prison for his actions. It is also a reminder to companies of the importance of export due diligence, especially in the case of selling microelectronics or other items that could be diverted for military use.

---

## *Former Special Agent in Charge of New York FBI Counterintelligence Division Pleads Guilty to Conspiring to Violate U.S. Sanctions on Russia (BIS Action)*

**Those involved.** Charles McGonigal, former Special Agent in Charge of the FBI New York Counterintelligence Division.

**Charges with penalties.** One Count of Conspiracy to Violate IEEPA (maximum of 20 years in prison); One Count of Conspiracy to Commit Money Laundering (maximum of five years in prison).

**What happened?** On August 15, McGonigal pleaded guilty to conspiring to violate the IEEPA and to committing money laundering after agreeing to provide services to Oleg Deripaska, a sanctioned Russian oligarch. (OFAC designated Deripaska as an SDN in 2018.) McGonigal contracted directly with Deripaska to provide investigative services, promising to look into a rival oligarch. We wrote about the original indictment in our [January 2023 Enforcement Roundup](#).

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

**Notably.** U.S. persons are prohibited from engaging in virtually any transaction with or providing any services to, an SDN. The provision of certain compliance and legal advice to an SDN is one important exception, though getting paid for such service will likely require a license. U.S. persons holding property of an SDN also must block and report that property to OFAC. Companies and individuals must know their customers to avoid engaging in prohibited conduct.

## China

---

### ***Securities & Exchange Commission Charges 3M with Foreign Corrupt Practices Act Violations Relating to China Subsidiary (SEC Action)***

**Those involved.** 3M Company, a Minnesota-based global manufacturer of products and services.

**Charges with penalties.** Violations of the FCPA's books and records and internal controls provisions (agreed to pay over \$6.5 million).

**What happened?** On August 25, the SEC announced that 3M had agreed to pay over \$6.5 million to settle allegations that its Chinese subsidiary paid for lavish overseas travel for Chinese officials employed at state-owned healthcare facilities. The travel expenses, disguised as marketing and outreach efforts, were purportedly to send officials to overseas conferences, educational events, and facility visits designed to promote 3M products. Instead, most funds were used to pay for guided tours, shopping, and other recreational activities. The SEC also emphasized that the Chinese officials would miss or not even attend scheduled business events. Many of the events were offered completely in English, which some attendees did not speak. 3M's Chinese subsidiary allegedly paid approximately \$1 million for over 24 trips.

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

**Notably.** The FCPA permits "reasonable and bona fide expenditure[s], such as travel and lodging expenses, incurred by or on behalf of a foreign official . . . directly related to . . . the promotion, demonstration, or explanation of products or services." The facts suggest these expenses were not reasonable even if they arguably were to promote 3M products. It is also notable that, at least to date, there has been no enforcement action in this matter by the DOJ. The SEC may have determined that bringing a books and records violation would be easier than proving payment of bribes.

The 3M action should be viewed in the context of a recent [DOJ opinion](#) requested by a U.S. child welfare agency. The requestor asked whether paying for travel, lodging, and certain recreation of two foreign officials for annual visits to families who have adopted children would result in enforcement. The requester proposed to only pay for economy airfare, domestic lodging at a mid-range hotel, local transportation, and meals; proposed to pay no more than \$100 for recreational activities; did not select the specific officials who would travel; and had no non-routine business under consideration by the relevant officials.

The DOJ concluded that it would not take any enforcement action given that "the proposed expenses reflect no corrupt intent of the Requestor and appear to be reasonable and bona fide expenses directly related to 'the promotion, demonstration, or explanation of [the Requestor's] products or services.'"

Together, the 3M matter and this DOJ opinion underscore that when paying for travel and lodging of foreign officials, companies must ensure that expenses are reasonable and have a valid nexus to a legitimate business purpose.

---

## ***Commerce to Remove 33 Parties from the Unverified List after Successful Completion of End-Use Checks (BIS Action)***

**Raimondo in China.** On August 21, the same day as Secretary Raimondo announced she would be visiting China, BIS removed 33 entities from the Unverified List. Twenty-seven of the entities are based in China; other delisted companies are from Indonesia, Pakistan, Singapore, Turkey, and the UAE. The Unverified List is a tool used by BIS when it is “unable to establish the bona fides of a foreign party subject to an end-use check due to reasons outside of that foreign party’s control.” Placement on the list triggers certain additional export requirements, but practically, it requires “BIS impose pre-license checks on all subsequent license applications received for exports to a listed party.” BIS must then conduct an end-use check to verify the bona fides of the company. If such a check cannot be completed, BIS may move the entity onto the Entity List.

The press release can be found [here](#). An October 7, 2022, memo detailing a new two-step policy for the Unverified List can be found [here](#).

**Notably.** The move may have been a gesture of goodwill before Secretary Raimondo’s visit to China, but we do not expect any overall softening of U.S. export controls on China, particularly on items considered to be important to national security.

---

## **Iran and North Korea**

### ***OFAC Settles with Construction Specialties Inc. for \$660,594 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations (OFAC Action)***

**Those involved.** Construction Specialties Inc., a New Jersey architectural building product supplier.

**Charges with penalties.** Three apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR) (\$660,594 penalty).

**What happened?** Construction Specialties Inc.’s (CS) wholly-owned UAE subsidiary (CSME) sought to provide building materials for the construction of an Iranian mall. CS engaged outside counsel to determine if such a transaction would run afoul of U.S. sanctions on Iran and subsequently notified CSME that the Iran transaction was prohibited. Nevertheless, CSME imported U.S.-origin goods to the UAE and then re-exported them to Iran. Senior CSME officials falsified or omitted the ultimate destination of products, referred to the project using a code name, removed labels detailing the U.S. origin of the goods, and even combined the goods with other non-U.S. origin goods produced in the UAE. The \$660,594 settlement amount reflected OFAC’s determination that the violations were egregious but voluntarily-self disclosed.

The web notice can be found [here](#). The settlement agreement can be found [here](#).

**Notably.** The statutory maximum civil monetary penalty was \$2,201,982, yet OFAC determined that less than half of that penalty was warranted due, in part, to “CS’s remedial response.” In addition to “immediately terminating the responsible employees, promptly initiating an internal investigation, hiring new key compliance personnel, and implementing updated company-wide corporate-wide corporate compliance policies,” CS voluntarily disclosed the conduct to OFAC after a whistleblower brought the problem to the attention of CS management. The whistleblower flew to CS’s headquarters in New Jersey from the UAE to personally deliver the message. This penalty reduction shows the importance of developing a robust compliance infrastructure, including a call-out culture of compliance where personnel feel empowered to use whistleblower mechanisms.

Interestingly, the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) also maintains an Anti-Money Laundering (AML) and Sanctions Whistleblower Program, which awards whistleblowers

between 10-30% of monetary penalties imposed if their information leads to an enforcement action. If the whistleblower would have alerted FinCEN rather than their company, he/she would have received a substantial financial reward.

---

### ***Tornado Cash Founders Charged with Money Laundering and Sanctions Violations (DOJ Action)***

**Those involved.** Roman Storm and Roman Semenov, founders of Tornado Cash, a cryptocurrency mixer.

**Charges with penalties.** One Count of Conspiracy to Commit Money Laundering (maximum of 20 years in prison); One Count of Conspiracy to Violate the IEEPA (maximum of 20 years in prison); One Count of Conspiracy to Operate an Unlicensed Money Transmitting Business (maximum of 20 years in prison).

**What happened?** On August 23, the U.S. Attorney's Office for the Southern District of New York unsealed an indictment alleging that Storm and Semenov operated Tornado Cash with the understanding that it was being used to violate U.S. sanctions while choosing not to implement adequate controls such as Know Your Customers (KYC) or AML programs in violation of federal requirements for "money transmitting businesses." The DOJ also asserted that the co-defendants promoted Tornado Cash as a service that provides the ability to make anonymous transactions. Tornado Cash became a vehicle for money laundering as cyber criminals used the service to launder their ill-gotten gains. Victims of such crimes frequently alerted the co-defendants to their service's role, however, the co-defendants never took remedial actions. The service was allegedly used by the infamous North Korean hacking syndicate, the Lazarus Group, to launder over \$450 million. The Lazarus Group was designated by OFAC in September 2019. Semenov was concurrently [designated](#) by OFAC, but remains at large. Storm was arrested in Washington.

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

**Notably.** When OFAC designated Blender.io in May 2022, it was the first time the Treasury Department had targeted a virtual currency mixer. OFAC has since made several other designations that reflect an increased focus on virtual currency platforms. Companies operating in the virtual currency space should continue to conduct risk assessments and consider adapting their existing AML and sanctions compliance infrastructure accordingly.

## **Elon Musk**

---

### ***DOJ Sues SpaceX for Discriminatory Hiring Practices (DOJ Action)***

**Those involved.** Space Exploration Technologies Corporation (SpaceX), a rocket and spacecraft manufacturer.

**Charges with penalties.** Violating the Immigration and Nationality Act (INA) ("[t]he United States seeks fair consideration and back pay for asylees and refugees who were deterred or denied employment at SpaceX due to the alleged discrimination," "civil penalties," and "policy changes.")

**What happened?** On August 24, DOJ filed a lawsuit alleging that "SpaceX discriminated against asylees and refugees throughout its hiring process, including during recruiting, screening, and selection" in violation of the INA. SpaceX repeatedly stated that it was illegal to hire individuals who are not lawful permanent residents or U.S. citizens due to export compliance requirements under the ITAR and EAR. In fact, SpaceX's CEO, Elon Musk, tweeted, "US law requires at least a green card to be hired at SpaceX, as rockets are considered advanced weapons technology."

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

**Notably.** While the ITAR and EAR both impose restrictions on who can access covered technologies, under each regime “U.S. persons” generally may access export-controlled items without an export license. Importantly the term “U.S. person” includes any person “who is a protected individual as defined by 8 U.S.C. 1324b(a)(3),” which includes both refugees and asylees.

It is not uncommon for companies to misinterpret the definition of “U.S. person” under export control laws. In fact, General Motors agreed to pay over \$365,000 to settle a similar matter in April when it allegedly violated hiring laws as it attempted to comply with ITAR requirements.

## Enforcement Policy Updates

---

### *Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern (White House Action)*

On August 9, pursuant to his authority under IEEPA and the National Emergencies Act (NEA), President Biden issued long-awaited Executive Order 14105, authorizing the Treasury Department to implement a new screening mechanism targeting certain outbound investments. Concurrently, the Treasury Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) seeking comments to inform its buildout of the screening mechanism.

The mechanism will 1) require U.S. persons to notify the Treasury Department of certain transactions or 2) prohibit particular transactions where U.S. persons are transacting with entities affiliated with a “country of concern” and operating in three narrow industries—i) chips and microelectronics, ii) quantum, and iii) artificial intelligence. The only “country of concern” at present is China (including Hong Kong and Macau).

The Executive Order can be found [here](#). The ANPRM can be found [here](#). The Treasury Department Fact Sheet can be found [here](#).

**Notably.** The ANPRM lists 80 questions for commenters to address. These questions provide some insight into the direction Treasury may take when implementing the final regulations as the ANPRM defines certain terms, highlights particular types of transactions, and notes potential exceptions. Interested parties have until September 28 to submit comments.

---

### *Forced Labor Enforcement Task Force Publishes Updated Uyghur Forced Labor Prevention Act Strategy (FLETF Action)*

**New additions.** On August 1, the Department of Homeland Security (DHS), Chair of the FLETF, published an updated UFLPA Strategy and added two new entities to the UFLPA Entity List, effective August 2.

The updated strategy remains largely the same as its predecessor, with two interesting amendments. First, while the high-priority sector list was left unchanged, the updated strategy notes other “potential risk areas,” including “red dates and other agricultural products, vinyl products, lead-acid and lithium-ion batteries, copper and downstream products, electronics, and tires and other automobile components.” Second, the strategy discusses the FLETF’s efforts to “build and enhance its partnerships” with Nongovernmental Organizations (NGOs). The updated strategy states, “[T]he FLETF continues to work closely with the NGO community, which provides important research related to ongoing forced labor schemes and human rights violations and abuses in Xinjiang that can help identify possible additions to the UFLPA Entity List.” Given the FLETF’s robust engagement with NGOs, companies should make themselves aware of reports from major groups and take their allegations seriously.

In addition, Camel Group Co., Ltd., a Chinese battery manufacturer; Chenguang Biotech Group Co., Ltd., a Chinese natural pigment and spices manufacturer; and Chenguang’s subsidiary, Chenguang Biotechnology

Group Yanqi Co. Ltd. were all added to the Entity List. These additions follow additions in June, when Xinjiang Zhongtai Chemical Co. Ltd., Ninestar Corporation, and eight of Ninestar's subsidiaries were added to the list. These new additions bring the list to 24 total companies. Listed entities are subject to the UFLPA's rebuttable presumption, and the goods and products they produce, in whole or in part, are prohibited from entering the United States.

The United States Trade Representative press release announcing the changes can be found [here](#). The full UFLPA entity list can be found [here](#).

**Notably.** The expansion of "potential risk areas" in the updated strategy should be read in conjunction with recent comments from CBP's Executive Director of Trade Remedy and Law Enforcement that CBP will review shipments of the enumerated prioritized commodities and commodities more broadly across the tariff schedule.

The addition of a Chinese battery maker is also notable in light of CBP's increased scrutiny of automotive components. In June, CBP reviewed seven shipments categorized as "automotive or aerospace" products worth approximately \$400,000. In August, that number jumped to 18 shipments worth approximately \$2.5 million. With an influx of funding that should allow CBP to hire and train more people and procure technology to more efficiently and effectively screen shipments, enforcement under the UFLPA will likely increase across a broad range of sectors.

## 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](#).

## Authors

---



[Faith Dibble](#)

202-827-2965

[faith.dibble@bassberry.com](mailto:faith.dibble@bassberry.com)



[Thaddeus R. McBride](#)

202-827-2959

[tmcbride@bassberry.com](mailto:tmcbride@bassberry.com)