

International Trade Enforcement Roundup

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You are reading the **January 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

- ❖ January saw continuing focus on **Russia**. First, the Commerce Department's Bureau of Industry and Security (BIS) expanded export controls on certain goods for Russia and Belarus. Second, a U.S.-Israeli citizen was arrested for illegally exporting thousands of U.S. microelectronics to Russia. Third, the Treasury Department's Office of Foreign Assets Control (OFAC) designated a United Arab Emirates (UAE) shipping company for violating the **oil price cap**.
- ❖ There were two notable actions involving **Iran** this month. The Department of Justice (DOJ) charged four Chinese nationals with illegally procuring U.S.-origin products for Iranian efforts to produce unmanned aerial vehicles (UAVs) and ballistic missiles. Also, a U.S. citizen was sentenced to two years in prison for improperly exporting heavy machinery to Iran **using the UAE as a transshipment point**.
- ❖ BIS imposed a \$153,175 penalty against Wabtec Corporation for violations of the **antiboycott regulations**—an unusually large penalty in the context of boycott enforcement.
- ❖ SAP SE, a global software company, entered into a Deferred Prosecution Agreement (DPA) with the DOJ and resolved a Securities and Exchange Commission (SEC) investigation into bribery schemes involving a number of countries in Africa, Indonesia, and elsewhere in violation of the **Foreign Corrupt Practices Act** (FCPA).
- ❖ Lastly, a new BIS policy announced several “key updates” to **BIS's Voluntary Self-Disclosure (VSD) process** and hinted at increased penalties for export control violations going forward.

Russia

Commerce Strengthens Controls Against Russia and Belarus (BIS Action)

More controls. On January 23, BIS strengthened controls under the Export Administration Regulations (EAR) to tighten restrictions on exports to Russia and Belarus of certain U.S.-origin goods. The action added almost 100 Harmonized Tariff Schedule (HTS) codes to the list of items that require a license for export, re-export, or in-country transfer to Russia or Belarus. The HTS codes cover certain chemicals, lubricants, metals, and the entirety of Chapter 88 of the HTS (which covers aircraft, spacecraft, and related parts) in an attempt to restrict Russian access to important defense inputs. The rule also broadens controls on certain EAR products and “removes the lowest-level military and spacecraft-related items from being eligible for de minimis treatment when incorporated into foreign-made items for export from abroad or re-export or software.”

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

Notably. The rule demonstrates that U.S. export control rules continue to evolve and change. It is crucial that compliance programs evolve alongside them.

Businessman Arrested for Scheme to Illegally Export Semiconductors and Other Controlled Technology to Russia (DOJ Action)

Those involved. Ilya Kahn, a U.S., Israeli, and Russian citizen and resident of New York.

Charges with penalties. One Count of Violating the Export Control Reform Act (ECRA) (maximum of 20 years in prison).

What happened? On January 18, Kahn was arrested in Los Angeles and charged for allegedly violating the ECRA for his role in procuring semiconductors for sanctioned Russian businesses. Kahn used two businesses he owned to export electronics from the United States to Joint Stock Company Research and Development Center ELVEES, a Russian semiconductor manufacturer added to the BIS Entity List in March 2022 and OFAC’s Specially Designated Nationals (SDN) list in September 2022. Kahn reportedly shipped more than 290,000 microelectronics and similar items out of the United States and received over \$37 million from Elvees and other related entities between 2012 and 2022.

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

Notably. In February of 2023, BIS and the DOJ launched the Disruptive Technology Strike Force to bring together experts and resources from BIS, DOJ, the Federal Bureau of Investigations (FBI), the Department of Homeland Security (DHS) and others to target and prosecute bad actors seeking to procure critical technologies for nation-state adversaries. The Strike Force uses undercover agents and other traditional law enforcement methods to hold those who violate U.S. export control laws accountable. The cross-agency approach has led to numerous arrests and will likely lead to more in the future.

Treasury Targets Price Cap Violation-Linked Shipping Company (OFAC Action)

Oil Price Cap. On January 18, OFAC designated Hennessea Holdings Limited, a UAE-based shipping company and vessel owner, for violating the G7-imposed price cap on Russian oil after transporting Russian crude oil priced above the cap while using a U.S.-based service provider. All transactions by U.S. persons involving the property of Hennessea—including its vessels—are prohibited, and U.S. persons holding any property of Hennessea must block and report that property to OFAC.

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

Notably. On October 12, 2023, OFAC issued further [guidance](#) related to compliance with the price cap. This will continue to be an area of focus for U.S. law enforcement authorities and likely other G7 law enforcement authorities.

Iran

Chinese Nationals Charged with Illegally Exporting U.S.-Origin Electronic Components to Iran and Iranian Military Affiliates (DOJ Action)

Those involved. Baoxia Lui, Yiu Wa Yung, Yongxin Li, and Yanlai Zhong—four Chinese nationals.

Charges with penalties. One Count of Conspiracy to Commit Offenses Against the United States (maximum of five years in prison); One Count of Unlawful Export of U.S.-Origin Goods (maximum of 20 years in prison); One Count of Smuggling Goods from the United States (maximum of 10 years in prison); One Count of Submitting False or Misleading Export Information (maximum of five years in prison).

What happened? On January 30, Lui, Yung, Li, and Zhong were indicted for using Chinese companies to ship U.S.-origin goods to Iran for the production of UAVs, ballistic missile systems, aerospace products, and other military equipment. The individuals concealed the ultimate end users of the goods, which were shipped to China and Hong Kong before being re-exported to Iranian entities. According to the indictment, “thousands of U.S.-origin goods with military applications that were subject to U.S. export controls were unlawfully exported to Iran” to enhance Iranian defense capabilities.

Notably. In June 2023, the DOJ and Departments of Commerce and Treasury issued a joint advisory to alert industry to legal obligations in relation to the export of products that could be used to develop UAVs (see our [June 2023](#) Enforcement Roundup). Then, in October 2023, the DOJ and Departments of Commerce, State, and Treasury issued an advisory alerting private industry to the threats posed by Iran’s attempts to procure components and materials for its ballistic missile program (see our [October 2023](#) Enforcement Roundup). This is clearly a priority for U.S. government enforcement efforts. Companies operating in the industry should be wary.

Virginia Man Convicted of Exporting Heavy Equipment to Iran in Violation of U.S. Sanctions Laws (DOJ Action)

Those involved. Jalal Hajavi, a U.S. citizen.

Charges with penalties. Conspiring to Violate the International Emergency Economic Powers Act (IEEPA); Conspiring to Violate the Iranian Transactions and Sanctions Regulations (ITSR); Smuggling Goods from the United States; Unlawfully Exporting and Re-exporting Goods from the U.S. to Iran (sentenced to two years in prison followed by three years of supervised release).

What happened? On January 18, Hajavi was sentenced to 24 months in prison followed by three years of supervised release after being convicted of illegally exporting heavy equipment to Iran. Hajavi used his company—JSH Heavy Equipment, LLC—to purchase heavy equipment such as wheel loaders for export to Iran through the UAE using freight forwarders. Hajavi also concealed his activities by causing false information to be entered into the Automated Export System (AES) by a shipping company.

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

Notably. Hajavi used freight forwarders to ship the equipment to the UAE from where it would be diverted to Iran. UAE is a common transshipment point for Iran. A March 2023 Tri-Seal Compliance Note issued by the DOJ

and Departments of Commerce and Treasury noted that the routing of shipments through established transshipment points like the UAE should represent a red flag for businesses. We wrote about this Tri-Seal Compliance Note in the [March 2023](#) Enforcement Roundup.

Antiboycott

BIS Imposes \$153,175 Penalty Against Wabtec Corporation to Resolve Alleged Violations of Antiboycott Regulations (BIS Action)

Those involved. Wabtec Corporation, a Pennsylvania-based global manufacturer and supplier of rail technology.

Charges with penalties. 43 violations of the antiboycott provisions of the EAR (a civil penalty of \$153,175).

What happened? On January 29, BIS announced that it had imposed a civil penalty of more than \$150,000 against Wabtec for failing to report 43 separate boycott requests from a customer in Pakistan. The customer asked Wabtec to “refrain from importing Israeli-origin goods into Pakistan.” The boycott request language was found in tenders issued to Wabtec by its customer. One such boycott request read, “No import will be permissible from Israel & India.” Wabtec voluntarily disclosed the conduct, cooperated with BIS’s investigation, and took remedial measures to prevent future violations.

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

Notably. Even though Wabtec voluntarily disclosed the conduct, the penalty is large relative to past penalties in connection with antiboycott violations. This penalty could represent a sea change in how BIS will administer and enforce the antiboycott regulations going forward. Moreover, Pakistan is not typically identified as a boycotting country when the [U.S. Treasury Department issues its quarterly list](#) of boycott countries. This action serves as a reminder that boycott requests may come from countries not specifically identified by the Treasury Department.

FCPA

SAP to Pay Over \$220 Million to Resolve Foreign Bribery Investigations (DOJ and SEC Action)

Those involved. SAP SE, a global software company.

Charges with penalties. DOJ: Violating the Anti-Bribery Provision of the FCPA and One Count of Violating the Books and Records Provisions of the FCPA (a criminal penalty of \$118.8 million and an administrative forfeiture of \$103.4 million). SEC: Violating the Anti-Bribery, Books and Records, and Internal Accounting Provisions of the FCPA (approximately \$98.5 million in disgorgement and prejudgment interest).

What happened? On January 10, SAP agreed to pay over \$220 million to resolve investigations spearheaded by the DOJ and SEC into schemes to bribe government officials in South Africa, Indonesia, and other countries such as Ghana, Kenya, Malawi, and Tanzania. The company also entered into a DPA with the DOJ.

From 2013 to 2018, SAP made improper payments to officials working at city-level governments and state-owned entities in South Africa and Indonesia to secure and retain government contracts. SAP used third-party intermediaries to funnel cash, luxury goods, and even shopping trips to government officials and their families. As part of the DPA, SAP agreed to multiple compliance measures, including assigning “one or more senior corporate executives” with responsibility to implement and oversee anti-corruption compliance, instituting compensation structures that incentivize compliance behavior, and more.

The SEC resolution focused on SAP conduct between 2014 and 2018 in South Africa, Malawi, Kenya, Tanzania,

Ghana, Indonesia, and Azerbaijan. According to the SEC, SAP employees made improper payments to government officials and improperly recorded the bribes as legitimate business expenses. Up to \$59 million of the nearly \$100 million penalty can be offset by the company's payment to the South African government in connection with a parallel investigation.

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

Notably. In 2016, SAP agreed to remit \$3.7 million in sales profits to settle an SEC investigation into FCPA violations in Panama. Recidivism is an area of focus for U.S. law enforcement officials and may have led to an increased penalty in this new matter.

Regulatory Updates

Further Enhancements to Voluntary Self-Disclosure Process (BIS Action)

Big Penalties Inbound. On January 16, Matthew Axelrod, the Commerce Department's Assistant Secretary for Export Control, announced several "key updates" to BIS's VSD process to "enhance the efficiency and effectiveness" of the VSD program. The updates include:

1. First, the policy strongly encourages that VSDs be submitted through a designated email inbox to enable BIS to "receive, monitor, and track submissions more effectively, thus enabling a quicker and more responsive interface with those making disclosures."
2. Second, the policy enhances a fast-track policy established in June of 2022 by allowing for an "abbreviated 'narrative account' option" for the majority of VSD submissions. This allows disclosing parties without aggravating factors to submit an abbreviated narrative account.
3. Third, the policy clarifies that violations that are minor or technical, e.g., where the violation occurred through a good-faith misinterpretation or checking the wrong box, will be adjudicated through the "fast track" process.
4. Fourth, the policy explains that those submitting VSDs and who would like to engage in activities otherwise prohibited by Section 764.29(e) should send a courtesy copy of the request to the Office of Export Enforcement by email to expedite the request.

Notably. While this policy change is important, it may not have been the most interesting development from the event where it was announced. Assistant Secretary Axelrod also stated that "[t]here are going to have to be some penalties that get everyone's attention . . . I think we are on the cusp of that." He continued, "[y]ou can expect to see more big-ticket corporate resolutions going forward." Historically, penalties levied by BIS have been lower when compared to those imposed pursuant to the FCPA or under U.S. sanctions. However, since Assistant Secretary Axelrod arrived at the Commerce Department and with consistent pressure from Congress to increase penalties, BIS has expressed an interest in increasing penalties.

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), anti-bribery (DOJ and SEC), antiboycott 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).

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