

International Trade Enforcement Roundup

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You are reading the **September 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

- ◆ John Deere agreed with the Securities and Exchange Commission (SEC) to pay nearly \$10 million related to **Foreign Corrupt Practices Act (FCPA)** violations resulting from conduct of a Thai subsidiary.
- ◆ The Department of Justice (DOJ) announced five trade enforcement matters resulting from the efforts of the **Disruptive Technology Strike Force**.
- ◆ **The Bureau of Industry and Security's (BIS) Office of Information and Communications Technology and Services (OICTS)** promulgated a proposed rule that would prohibit certain transactions involving "connected vehicle" technology from the People's Republic of China (PRC) and Russia.
- ◆ **BIS imposed a \$400,000 penalty** against First Call International, a global procurement and manufacturing company, for export violations.
- ◆ The Office of Antiboycott Compliance (OAC) settled with Quantum Corporation, a data storage company, for **violations of U.S. antiboycott regulations**.

SEC Charges John Deere with FCPA Violations for Subsidiary's Role in Thai Bribery Scheme (SEC Action)

Those involved. Deere & Company (John Deere), a United States-based agricultural machinery manufacturer.

Charges and penalties. Violating the FCPA's books and records and internal accounting controls provisions (\$5.4 million in disgorgement and \$4.5 million in monetary penalties).

What happened? On September 10, the SEC announced that John Deere agreed to pay almost \$10 million to resolve allegations it had violated the FCPA. The SEC alleged that Wirtgen Thailand, an indirect subsidiary of John Deere, engaged in numerous bribery schemes to obtain government business. John Deere acquired the Wirtgen Group, the parent company of Wirtgen Thailand, in December 2017, and thus was responsible for the conduct of the Thai subsidiary under the theory of successor liability.

For one, the SEC asserted that Wirtgen Thailand paid for four Thai Department of Highways (DOH) officials to travel to Switzerland for eight days instead of to the purported destination, the company's German facility. Wirtgen Thailand submitted a bid on a DOH tender during the trip and was awarded the tender just after the trip ended. Wirtgen Thailand also regularly entertained Thai officials at massage parlors, and bribed public officials with cash and through a third party.

The SEC highlighted that these bribes and other improper payments were inaccurately recorded in the company's books and records as legitimate expenses and—not surprisingly—lacked appropriate specificity and detail.

In reaching the settlement, the SEC considered the remedial acts taken by John Deere and the company's cooperation. According to the SEC, John Deere promptly terminated relevant personnel, undertook an analysis and improvement of its compliance program, and extensively cooperated with the SEC, including translating relevant documents and making current and former personnel available to the SEC.

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

Notably. In its order, the SEC underscored that John Deere failed to fully integrate Wirtgen into its internal control system following the acquisition. Such integration is not explicitly required under the law, though for a publicly traded company, it is effectively a legal obligation to ensure that the consolidated accounts of the company are accurate. Regardless, as made clear in this matter, failure to integrate or even inadequate integration can lead to ongoing compliance violations that squarely fall under the responsibility of the parent company. Robust due diligence married with a careful integration plan is crucial for avoiding compliance issues following an acquisition, especially across borders.

Justice Department Announces Five Cases Tied to Disruptive Technology Strike Force (DOJ Action)

United States v. Postovoy

Those involved. Denis Postovoy, a Russian citizen living in the United States.

Charges and penalties. One Count of Conspiracy to Defraud the United States (maximum of 10 years in prison); Three Counts of Conspiring to Violate the Export Control Reform Act (maximum of 20 years in prison for each count); Two Counts of Smuggling Goods from the United States (maximum of 10 years in prison for each count); One Count of Conspiracy to Commit Money Laundering (maximum of 10 years in prison).

What happened? On September 16, Postovoy was arrested and his indictment was unsealed. The indictment alleges that beginning in at least February 2022, Postovoy illegally exported microelectronics from the United States to Russia, using a network of companies in Hong Kong and Russia. Together with co-conspirators, Postovoy purchased microelectronics from U.S.-based distributors and exported them without authorization. Postovoy used intermediary destinations—Hong Kong and Switzerland—as transshipment points and misstated true end-users and end destinations of the exports.

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

United States v. Song Wu

Those involved. Song Wu, a Chinese national.

Charges and penalties. Fourteen counts of Wire Fraud (maximum of 20 years for each count); Fourteen Counts of Aggravated Identity Theft (maximum of two years for each count).

What happened? On September 16, an Atlanta federal court unsealed an indictment alleging Song attempted to obtain restricted or proprietary software from individuals employed by certain U.S. government agencies including the Air Force, the Army and the Navy, the Federal Aviation Administration, and NASA, as well as from major research universities and private sector companies. Song allegedly created fake email accounts and sent emails to U.S.-based researchers and engineers in an attempt to obtain information for industrial and military applications. According to the indictment, Song was employed by Aviation Industry Corporation of China (AVIC), a Chinese state-owned defense conglomerate.

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

United States v. Teslenko

Those involved. Samer Bhambhani, a Massachusetts resident, and Maksim Teslenko, a Russian national.

Charges and penalties. One Count of Conspiracy to Evade Export Controls, Commit Smuggling, and Defraud the United States (maximum of five years in prison); One Count of Smuggling (maximum of 10 years in prison).

What happened? From around 2015 through at least 2021, Bhambhani and Teslenko attempted to illegally export laser-welding machines from the United States to a plant in Russia. Bhambhani was arrested on September 9 and Teslenko remains at large.

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

United States v. Goodarzi

Those involved. Ron Goodarzi, a dual U.S. and Iranian citizen living in Texas.

Charges and penalties. One Count to Violate the International Emergency Economic Powers Act (maximum of 20 years in prison); Two Counts of Smuggling Goods from the United States (maximum of 10 years in prison per count).

What happened? On September 3, Goodarzi made his initial court appearance after being charged with smuggling into Iran certain components used in unmanned aerial vehicles (UAVs) and other manned aircraft. Court documents allege Goodarzi purchased aircraft parts from U.S.-based suppliers and then exported them to Iran using other countries—typically the United Arab Emirates (UAE)—as transshipment points. Goodarzi also personally traveled to Iran several times with aircraft parts in his checked luggage. At no time did Goodarzi have the necessary export authorization for these exports.

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

United States v. Wei

Those involved. Jia Wei, a Chinese national.

Charges and penalties. Two Counts of Wire Fraud (maximum of 20 years in prison); Conspiracy to Commit Computer Intrusions (maximum of five years in prison); Computer Intrusions (maximum of five years in prison); Two Counts of Aggravated Identify Theft (maximum of two years in prison for each count).

What happened? Wei, a member of China's People's Liberation Army, was indicted on September 16 for unlawfully accessing the network of a U.S. communications company and attempting to steal proprietary information, including documents related to civilian and military communication devices. The indictment alleges that in March 2017, Wei and co-conspirators accessed the company's network without authorization to steal information and install malware. Two days later, the U.S. telecommunications company filed a civil lawsuit against a Chinese competitor for trade secret theft.

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

Notably. These five cases were coordinated with the Disruptive Technology Strike Force, a multi-agency effort co-led by the DOJ and the Commerce Department. As made clear by these cases, the Strike Force has a broad remit to counter efforts by hostile states to illegally procure U.S. technology. The Strike Force has been especially impactful in breaking up illicit procurement networks since Russia invaded Ukraine. We wrote about other Strike Force efforts in our [April 2024 Enforcement Roundup](#), [March 2024 Enforcement Roundup](#), and [January 2024 Enforcement Roundup](#).

Commerce Announces Proposed Rule to Secure Connected Vehicle Supply Chains from Foreign Threats (BIS Action)

Ban on Certain Connected Vehicle Technologies. On September 26, the OICTS published a Notice of Proposed Rulemaking (NPRM) that "would prohibit the sale or import of connected vehicles integrating specific pieces of hardware and software, or those components sold separately, with a sufficient nexus to the People's Republic of China (PRC) or Russia." The proposed rule specifically focuses on Vehicle Connectivity System (VCS) hardware, which allows a car to communicate with systems outside the vehicle such as satellite systems, and software integrated into the Automated Driving System (ADS), which enables autonomous vehicles to operate without a driver. The proposed rule was prompted by a finding that "certain technologies originating from the PRC or Russia present an undue risk to both U.S. critical infrastructure and those who use connected vehicles."

Under the proposed rule, prohibitions for software would take effect beginning with the 2027 model year and hardware prohibitions would take effect for the 2030 model year. Interested parties have until October 28, 2024 to submit comments.

The proposed rule can be found [here](#).

Notably. The proposed rule could have a significant impact on automotive manufacturers and their supply chain strategies, as many leading connected technology manufacturers are Chinese. Companies dependent on Chinese or Russian producers of connected vehicle technologies should consider submitting comments while also beginning to explore alternative suppliers.

BIS Imposes Administrative Penalties Against First Call International Inc. for Submission of a Backdated Document and Prohibited Exports (BIS Action)

Those involved. First Call International Inc., a Texas-based procurement, manufacturing, and supply company to aerospace, defense, and other companies.

Charges and penalties. One Charge of Misrepresentation or Concealment of Facts; Two Charges of Engaging in Improper Conduct (\$439,992 civil penalty).

What happened? On September 2, BIS announced a \$439,992 administrative settlement against First Call International Inc. based on the submission of a “backdated document” to disguise a transaction as complying with the Export Administration Regulations (EAR) and for illegally exporting military parts.

According to BIS, First Call amended an Electronic Export Information (EEI) filing falsely indicating it had exported certain sensors, valued at approximately \$117,500, under License Exception Strategic Trade Authorization (STA). The original equipment manufacturer of the sensors subsequently informed BIS it had never received a Prior Consignee Statement (PCS), a requirement to export under STA. After BIS requested the PCS from First Call, the company asked its foreign customer to provide a backdated PCS.

In addition, First Call improperly exported approximately \$36,000 in military aircraft parts from the United States to Malaysia via Australia. First Call also illegally exported military aircraft parts and components to South Korea.

While First Call must pay an initial amount of \$75,000, BIS suspended the remaining \$364,992 and, if First Call complies with the settlement agreement and commits no other violations, the suspended portion of the penalty will be waived based on a demonstrated limited ability to pay.

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

Notably. It is often said that the cover-up is worse than the crime, and this matter is another illustration of this adage. In all likelihood, if First Call had submitted a voluntary disclosure of this matter, it would have paid a small or no penalty.

Following this settlement, BIS announced a [final rule](#) revising the EAR’s enforcement provisions to incorporate several policy changes previously announced through public memorandum, including recognizing the nondisclosure of a significant EAR violation as an aggravating factor when determining an appropriate penalty. Companies that discover potential violations should consult with trade counsel to consider whether filing a voluntary self-disclosure is appropriate.

BIS Imposes Penalty on Quantum Corporation to Resolve Alleged Violations of the Antiboycott Regulations (BIS / OAC Action)

Those involved. Quantum Corporation, a California-based data storage, management, and protection company.

Charges and penalties. 45 Alleged Violations of the Antiboycott Provisions of the EAR (\$151,875).

What happened? On September 30, OAC imposed a \$151,000 penalty for 45 violations of Section 760.5 of the EAR after Quantum allegedly failed to report the receipt of boycott requests. According to BIS, between July 2018 and December 2019, Quantum received 45 requests from a distributor based in the UAE asking that Quantum not provide goods of Israeli origin when fulfilling purchase orders. Quantum failed to report these requests. Quantum voluntarily self-disclosed the matter, implemented remedial measures, and cooperated with the OAC investigation.

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

Notably. This penalty reflects a growing commitment to enforcing U.S. antiboycott rules. In October 2022, BIS [increased](#) antiboycott penalties and required companies who enter settlement agreements to admit to the facts outlined in the agreement. In addition, in July 2023, BIS [reiterated](#) its commitment to enforcing the antiboycott rules against foreign subsidiaries of U.S. companies and modified the reporting form to require disclosers to include the name of the requesting party.

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 in 2024 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’s service is excellent. They are technically sound, pragmatic and prompt.” (from Chambers USA).

Learn more [here](#).

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