



**TORRES LAW**

INTERNATIONAL TRADE & NATIONAL SECURITY



# Trade Enforcement Digest

January 2022 | Torres Law, PLLC

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Torres Law, PLLC is an international trade and national security law firm that assists clients with the import and export of goods, technology, and services. The firm has extensive experience with the various regimes and agencies governing trade, such as the Directorate of Defense Trade Controls, the Bureau of Industry and Security, the Office of Foreign Assets Control, the U.S. Customs and Border Protection, and others. Our group provides clients with full support for all trade law issues, including U.S. export control and sanctions laws, industrial security, the Foreign Corrupt Practices Act, anti-boycott laws, and customs laws.

This Enforcement Digest has been prepared as an industry reference only and is not official direction or instruction, nor does it constitute legal advice. It is not intended to be used in place of any U.S. Government statute, regulation, authorization, or guidance. This Enforcement Digest is intended to provide a reference as of the date of publication and is not meant to be a comprehensive review of all enforcement actions taken in 2021. Please ensure that you consider any updates to U.S. Government statutes, regulations, or guidance that may have occurred since publication when you use this Enforcement Digest.

## ABOUT OUR LAW FIRM

Torres Law is a leading boutique law firm specialized in international trade and national security matters. We have extensive experience with the various regimes and agencies governing trade such as U.S. Customs and Border Protection, the Bureau of Industry and Security, the Directorate of Defense Trade Controls, the Office of Foreign Assets Control, the Defense Counterintelligence and Security Agency, and the Committee on Foreign Investment in the United States.

## PRACTICE AREAS



### CUSTOMS

U.S. Customs audits (e.g., Focused Assessments and Quick Response Audits), notices of action and enforcement, conduct internal compliance reviews, and pursue Customs rulings and advisory opinions. We frequently submit “prior disclosures” to U.S. Customs and negotiate for the reduction of penalties. We assist clients before local port officials and at Customs and Border Protection’s headquarters in Washington, D.C.



### EXPORTS

Export compliance and representation before various government agencies administering the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), and the Foreign Trade Regulations (FTR or Census regulations). We assist with export audits, government inquiries, voluntary disclosures, subpoenas, corporate investigations, and government enforcement actions.



### ECONOMIC SANCTIONS

Guidance regarding the U.S. sanctions programs administered by OFAC. We advise clients regarding the scope of the sanctions, potential exceptions, and assist with the preparation and submission of licenses. We also assist with audits, internal reviews, corporate investigations, voluntary self-disclosures, and developing compliance programs.



### FCPA

Assist clients with FCPA compliance and provide advice regarding the scope, meaning, and application of the FCPA and other anti-corruption laws.



### INDUSTRIAL SECURITY

Assist clients with industrial security matters in the context of cross-border corporate acquisitions involving the defense and high-tech industries. We have experience with filings with the Committee on Foreign Investment in the U.S. (CFIUS), which is responsible for regulating foreign direct investment in the United States. We also advise companies on Foreign Ownership, Control, or Influence (FOCI) mitigation and provide guidance on how transactions might be structured to best anticipate FOCI concerns.

## MEET THE TEAM

- ✓ Attorneys and Trade Advisors with impeccable credentials, specialized knowledge, and a wealth of experience.
- ✓ Our attorneys adhere to the highest professional standards and have achieved local and international preeminence in their practice areas.
- ✓ Widely published and sought after to participate in international trade discussions.
- ✓ Recognized by organizations like Who’s Who Legal, Chambers and Partners, Super Lawyers, and Women in Compliance Awards.
- ✓ Members of the International Lawyer Network, a global law firm network providing our clients with access to legal services in 69 countries on six continents.

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## **Introduction**

This digest and its appendices contain detailed outlines and analyses of recent economic sanctions and export-related enforcement actions taken by U.S. Government (“USG”) trade agencies, including the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), and the U.S. Department of State’s Directorate of Defense Trade Controls (“DDTC”). Furthermore, this digest examines enforcement actions taken against corporations under the Foreign Corrupt Practices Act (“FCPA”) by the Securities and Exchange Commission (“SEC”) and the U.S. Department of Justice (“DOJ”).

On October 5, 2021, Principal Associate Deputy Attorney General John Carlin addressed the future of DOJ corporate enforcement in a keynote address, announcing a renewal of focus and investment at DOJ in investigating violations of U.S. sanctions and export control laws. According to Carlin, the total number of open investigations into potential violations of sanctions and export controls has increased significantly in recent years and this trend is expected to continue. Moreover, a strong majority of such cases relate to one or more of the following four countries: Iran, China, Russia, and North Korea.

## Part 1: Treasury, OFAC Enforcement of Sanctions

### Overview of OFAC

OFAC is an arm of the U.S. Department of the Treasury that administers and enforces economic and trade sanctions against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States.

### Executive Summary of OFAC Enforcement of U.S. Sanctions

OFAC acts under Presidential national emergency powers and statute to prohibit transactions and block assets subject to U.S. sanctions. OFAC currently enforces more than 30 active sanctions programs.

### OFAC Sanctions Penalties

OFAC imposes civil monetary penalties for violations pursuant to five statutes: the Trading with the Enemy Act (“TWEA”), the International Emergency Economic Powers Act (“IEEPA”), the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), the Foreign Narcotics Kingpin Designation Act (“FNKDA”), and the Clean Diamond Trade Act (“CDTA”). The amount of civil monetary penalties varies by statute and is adjusted annually for inflation. Pursuant to OFAC’s most recent inflation adjustment on March 17, 2021, the maximum civil monetary penalties OFAC may impose per violation are as follows

- \$91,816 for TWEA;
- \$311,562 for IEEPA;
- \$82,244 for AEDPA;
- \$1,548,075 for FNKDA; and
- \$14,074 for CDTA.<sup>1</sup>

The maximum criminal penalties per OFAC violation include 20 years in prison, a fine of \$1 million, and the seizure or forfeiture of the goods involved in the violation.<sup>2</sup>

### OFAC Sanctions Compliance Implications for Industry

Companies should confirm that their compliance programs meet proper due diligence standards.

- **Screening policies** should be (i) consistent with sanctions regulations; (ii) uniform throughout subsidiary companies; (iii) designed to immediately block transactions if personnel have reason to believe a sanctions violation would result from the transaction; and (iv) commensurate with the size and assets of the company.
- **Screening technologies** should (i) keep pace with evolving industry standards; (ii) account for fuzzy logic searches for various spelling variations; and (iii) geolocate and flag/block customer Internet Protocol (“IP”) addresses if located in certain sanction-prone jurisdictions.

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<sup>1</sup> Inflation Adjustment of Civil Monetary Penalties, 86 Fed. Reg. 14,534, 14,535 (Mar. 17, 2021) (to be codified at 31 C.F.R. pts. 501, 510, 535–536, 539, 541–542, 544, 546–549, 552, 560–561, 566, 576, 583–584, 588, 592, 594, 597–598).

<sup>2</sup> 50 U.S.C. § 1705(c).

- **Employees, specifically compliance personnel**, should be (i) properly trained to reduce the risk of human error; and (ii) adequately vetted for relationships with sanctioned actors.
- **Business partners** should be adequately vetted for relationships with sanctioned actors.
- **Compliance procedures should require adequate investigations** where there is reason to believe there are (i) possible screening matches to sanctioned actors; (ii) compliance risks posed by relationships between potential customers and sanctioned actors; and (iii) sanctions-related whistleblower allegations.

Companies should be aware of the deceptive practices used to obfuscate intended end-users.

- A buyer or trade partner may falsely identify a pass-through entity as an end-user with the intention of re-exporting goods to sanctioned end-users.
- If a buyer or trade partner communicates any intention to resell products to sanctioned actors, there is a substantial risk that the buyer or trade partner may do so, even if they acknowledge sanctions restrictions and agree to resell to alternate legitimate customers.
- If a buyer or trade partner requests that “Made in USA” labels be removed from products, there is a substantial risk that the buyer or trade partner will resell those products to sanction-prone jurisdictions.

Companies can mitigate sanctions penalties by:

- Self-disclosing any known violations of sanctions regulations.
- Cooperating with OFAC investigations of alleged sanctions violations.
- Identifying weaknesses in internal compliance policies and taking steps to improve the policies.

#### OFAC Sanctions Statistics and Trends in 2021

As of December 2021, OFAC entered into settlement agreements with seventeen companies for violations of various OFAC regulations, issuing civil monetary penalties ranging from \$34,329 to \$8,572,500, and in one case, issuing a Finding of Violation (“FOV”) in lieu of a civil monetary penalty.<sup>3</sup> These enforcement actions offer valuable insight as to the scale and scope of civil penalties imposed by OFAC and underscore the importance of disciplined compliance programs for all companies subject to OFAC regulations. To date, of the seventeen OFAC enforcement actions against companies in 2021:

- Ten enforcement actions involved violations of the Iranian Transactions and Sanctions Regulations (“ITSR”).
- Two enforcement actions involved an egregious violation of OFAC regulations.
- Nine companies voluntarily self-disclosed their violations to OFAC.
- Union de Banques Arabes et Françaises was assessed the highest fine, in the amount of \$8,572,500 for violations of the Syria sanctions program and the Non-Proliferation sanctions program.

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<sup>3</sup> On November 9, 2021, OFAC issued a FOV to Mashreqbank psc for violations of the now-repealed Sudanese Sanctions Regulations, 31 C.F.R. Part 538. OFAC determined the appropriate administrative action was a FOV in lieu of a civil monetary penalty in part because Mashreqbank psc had voluntarily entered into a retroactive statute of limitations waiver agreement, without which OFAC would have been time-barred from charging the violations.

The table below provides an overview of the OFAC enforcement actions in 2021 to date.

Date	Company Name	Country	Egregious	Voluntary Self-Disclosure	Penalty	Programs
9/27/2021	<a href="#">Cameron International Corporation</a> <i>Oil and Gas Industry Supplier</i>	U.S.	N	N	\$1,423,766	Directive 4 of Executive Order 13662 of March 24, 2014, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine"  Ukraine-Related Sanctions Regulations, 31 C.F.R. § 589.201
9/27/2021	<a href="#">Schlumberger Rod Lift, Inc.</a> <i>Oil and Gas Industry Supplier</i>	U.S.	N	N	\$160,000	Sudanese Sanctions Regulations, 31 C.F.R. § 538.206
9/9/2021	<a href="#">NewTek, Inc.</a> <i>Production and Animation System Provider</i>	U.S.	N	Y	\$189,493	Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.204, 560.206  Executive Order 13628 of October 9, 2012, "Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran"
8/27/2021	<a href="#">First Bank SA and JC Flowers &amp; Co.</a> <i>Banking</i>	Romania and U.S.	N	Y	\$862,318	Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.203, 560.204  Syrian Sanctions Regulations, 31 C.F.R. §§ 542.205, 542.207  Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.215
8/26/2021	<a href="#">Bank of China (UK) Limited</a> <i>Banking</i>	U.K.	N	Y	\$2,329,991	Sudanese Sanctions Regulations, 31 C.F.R. § 538.205

Date	Company Name	Country	Egregious	Voluntary Self-Disclosure	Penalty	Programs
7/23/2021	<a href="#">Payoneer, Inc.</a> <i>Online Money Transmitter</i>	U.S.	N	Partial	\$1,400,301	Section 1(a)(iii) and Section 2 of Executive Order 13685 of December 19, 2014, "Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine"  Zimbabwe Sanctions Regulations, 31 C.F.R. § 541.201  Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. § 544.201  Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.204  Sudanese Sanctions Regulations, 31 C.F.R. § 538.205  Syrian Sanctions Regulations, 31 C.F.R. § 542.207
7/19/2021	<a href="#">Alfa Laval, Inc.</a>	U.S.	N	N	\$16,875	Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.204, 560.206, 560.208
7/19/2021	<a href="#">Alfa Laval Middle East Ltd.</a> <i>Seller of Energy Industry Equipment</i>	U.A.E.	Y	N	\$415,695	Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.203(a), 560.203(b)

Date	Company Name	Country	Egregious	Voluntary Self-Disclosure	Penalty	Programs
4/29/2021	<a href="#">MoneyGram Payment Systems</a> <i>Online Payment Service</i>	U.S.	N	Y	\$34,329	Foreign Narcotics Kingpin Sanctions Regulations, 31 C.F.R § 598.203  Narcotics Trafficking Sanctions Regulations, 31 C.F.R. § 536.201  Syrian Sanctions Regulations, 31 C.F.R. § 542.207  Democratic Republic of the Congo Sanctions Regulations, 31 C.F.R. § 547.201  Central African Republic Sanctions Regulations, 31 C.F.R. § 553.201  Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. § 544.201
4/29/2021	<a href="#">SAP SE</a> <i>Software</i>	Germany	N	Y	\$2,132,174	Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.204
4/29/2021	<a href="#">Alliance Steel, Inc.</a> <i>Steel Manufacturing</i>	U.S.	N	Y	\$435,003	Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.201, 560.206
3/26/2021	<a href="#">Nordgas S.r.l.</a> <i>Manufacturing</i>	Italy	Y	N	\$950,000	Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.203, 560.204
3/15/2021	<a href="#">UniControl, Inc.</a> <i>Manufacturing</i>	U.S.	N	Y	\$216,464	Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.204

Date	Company Name	Country	Egregious	Voluntary Self-Disclosure	Penalty	Programs
2/18/2021	<a href="#">BitPay, Inc.</a> <i>Bitcoin Service Provider</i>	U.S.	N	N	\$507,375	Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.204  Executive Order 13685 of December 19, 2014, "Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine"  Cuban Assets Control Regulations, 31 C.F.R. § 515.201  North Korea Sanctions Regulations, 31 C.F.R. § 510.206  Sudanese Sanctions Regulations, 31 C.F.R. § 538.205  Syrian Sanctions Regulations, 31 C.F.R. § 542.207
1/14/2021	<a href="#">PT Bukit Muria Jaya</a> <i>Paper Products</i>	Indonesia	N	N	\$1,016,000	North Korea Sanctions Regulations, 31 C.F.R. § 510.212
1/4/2021	<a href="#">Union de Banques Arabes et Françaises</a> <i>Financial Institution</i>	France	N	Y	\$8,572,500	Executive Order 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria"  Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters"

## **Part 2: BIS Enforcement of the EAR**

### Overview of BIS

The BIS within the U.S. Department of Commerce (“Commerce”) advances U.S. national security, foreign policy, and economic objectives by administering and enforcing an export control and treaty compliance system, and by promoting continued U.S. leadership in strategic technologies.

### Executive Summary of BIS Enforcement of the EAR

Pursuant to the Export Control Reform Act of 2018 (“ECRA”),<sup>4</sup> the BIS Office of Export Enforcement (“OEE”) administers the Export Administration Regulations (“EAR”),<sup>5</sup> which regulate exports and re-exports of commercial and military “dual-use” articles, technology, and software included on the Commerce Control List (“CCL”). All items on the CCL have corresponding Export Control Classification Numbers (“ECCNs”) that categorize CCL items based on the nature of the product, including the type of commodity, software, or technology and its respective technical parameters. CCL items may require a BIS license before they can be exported.

Goods may also fall under BIS jurisdiction if they are designated as EAR99. Most commercial products are designated EAR99 and generally do not require a license to be exported or re-exported. A BIS license is, however, required to export EAR99 goods to certain embargoed or sanctioned countries, to a party of concern, or in support of a prohibited end-use.

Certain individuals and organizations are prohibited from receiving U.S. exports and others may only receive U.S. exports if they have been licensed. BIS maintains a list of entities whose presence as parties in a transaction can trigger a license requirement under the EAR (“Entity List”).<sup>6</sup> BIS also maintains a list of firms for which BIS was unable to complete an end-use check (“Unverified List”)<sup>7</sup> and a list of firms and individuals whose export privileges have been denied (“Denied Persons List”). Firms appearing on the Unverified List present a “red flag” for exporters, imposing a duty to inquire before exporting to such unverified firms, whereas firms or individuals appearing on the Denied Persons List cannot participate in any export or re-export transaction subject to the EAR. The Military End User List (“MEU List”) identifies foreign parties prohibited from receiving items described in Supplement No. 2 of Part 744 of the EAR unless the exporter obtains a license. The MEU List, which contains parties determined by the USG to be “military end users,” as defined in Section 744.21(g) of the EAR, is not exhaustive; therefore, companies must conduct their own due diligence for entities not identified on the MEU List.

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<sup>4</sup> Export Control Reform Act, 50 U.S.C. §§ 4801–4852.

<sup>5</sup> Export Administration Regulations, 15 C.F.R. §§ 730–774 (2021).

<sup>6</sup> Entity List, 15 C.F.R. § 744, Supp. No. 4 (2021).

<sup>7</sup> Unverified List, 15 C.F.R. § 744, Supp. No. 4 (2021).

## EAR Penalties

Under the ECRA, EAR violations may be subject to criminal and administrative penalties. Criminal penalties can include up to 20 years of imprisonment and up to \$1 million in fines per violation. The maximum administrative monetary penalty is \$308,901 per violation or twice the value of the transaction, whichever is greater, and is adjusted for inflation annually.<sup>8</sup>

EAR violators may also be denied export privileges. A denial of export privileges prohibits individuals and entities from participating in any transaction subject to the EAR. Furthermore, it is unlawful for other individuals or entities to participate in an export transaction subject to the EAR with a denied person or entity.

## EAR Compliance Implications for Industry

### Guidance for the Export of CCL Items

- Exporters should always verify whether items to be exported are included on the CCL and correctly determine the applicable ECCN.
- When confirming an ECCN classification, exporters should not misrepresent (make incomplete or inaccurate statements or certifications regarding the nature of) a product or its end-uses or end-users to BIS.
- Exporters should properly train their compliance officials to reduce the risk of incorrect evaluations of whether an export license is required.
- If an item is included on the CCL with certain controls, exporters must obtain the proper BIS export license.
- Self-disclosing a violation is generally considered a mitigating factor by BIS in assessing fines.

### General Guidance

- Exporters should not conceal failures to comply with sanctions regulations.
- Exporters should not conspire to violate sanctions regulations.
- Exporters should ensure that their compliance procedures account for deceptive pass-through entity strategies.
  - Buyers may have undisclosed intentions to re-export to sanctioned actors. Such intentions may sometimes be discovered through due diligence investigations, for example, by confirming the identity of end-users.
- Exporters should heed sanctions-related warnings from freight-forwarders.

## EAR Statistics and Trends in 2021

In 2021, BIS entered into twenty settlement agreements with firms ranging from \$20,000 to \$3,290,000 for violations of the EAR. These enforcement actions offer valuable insight as to the scale and scope of civil penalties imposed by BIS and underscore the importance of disciplined compliance programs for all companies that export controlled items.

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<sup>8</sup> Civil Monetary Penalties Adjustment for Inflation, 86 Fed. Reg. 1,764 (Jan. 11, 2021) (to be codified at 15 C.F.R. pt. 6).

To date, of the twenty OEE enforcement actions taken against companies in 2021:

- Six actions targeted exporters that either engaged in unlicensed shipments to Iran, conspired to ship unlicensed goods to Iran, or shipped to end-users in Iran knowing an EAR violation would occur;
- Four actions targeted exporters that engaged in unlicensed shipments to China or attempted to do so;
- Three actions targeted exporters that engaged in unlicensed shipments to Russia, caused an unlicensed shipment to Russia, or shipped to end-users in Russia knowing an EAR violation would occur;
- Five actions targeted exporters that shipped items designated EAR99;
- Fourteen actions targeted exporters that shipped items on the CCL; and
- The highest fine was assessed against SAP SE, a German cloud-based software company that caused the unauthorized export and re-export of SAP software to Iran in violation of the EAR and the ITSR.

The table below provides an overview of the BIS enforcement actions in 2021, to date.

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
11/4/2021	<a href="#">SP Industries, Inc. (U.S.)</a> <i>Scientific Equipment Manufacturing</i>	China	15 C.F.R. § 764.2(a)  2019	EAR99 - Precision Temperature Cycling Systems	\$26,016 \$104,067 \$26,016 \$26,016	<b>Monetary Penalty</b> \$80,000  <b>Additional Settlement Requirements</b> Complete an internal audit of export controls compliance program, complete an external audit by unaffiliated third-party consultant, and submit results of audits to BIS	\$80,000	N	Complete an internal audit of export controls compliance program  Complete an external audit by unaffiliated third-party consultant  Submit results of audits to BIS
10/12/2021	<a href="#">VTA Telecom Corporation (U.S.)</a> <i>Subsidiary of Vietnamese State-Owned Telecommunications Company</i>	Vietnam	15 C.F.R. § 764.2(e) 15 C.F.R. § 764.2(g) 15 C.F.R. § 764.2(a)  2015-2016	3A001.b.3.b - Power Amplifiers/JFET Transistors 9A610.x - Actuators 9B604.c - Mass Properties Instrument and Related Equipment 5A002.a.1 - Computer Processor Chips	\$59,100 \$235,000 \$624,373 \$3,930	<b>Monetary Penalty</b> \$1,869,372  <b>Additional Settlement Requirements</b> Expend \$25,000 on additional/ongoing export control compliance efforts and retain a Director of Trade Compliance to oversee export activities	\$1,869,372	N	Expend \$25,000 on additional/ongoing export control compliance efforts  Retain a Director of Trade Compliance to oversee export activities

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
9/28/2021	<a href="#">Space Silicon Technology Corporation (U.S.)</a> <i>Radiation and Extreme Temperature Hardened Integrated Circuit Manufacturing</i>	Russia	15 C.F.R. § 764.2(d) 2014-2019	9A515.e.1 - Spacecraft and Related Components	\$497,000	<b>Monetary Penalty</b> \$497,000  <b>Denial of Export Privileges</b> Denial of export privileges imposed and suspended for two-year probationary period	\$497,000	Y (denial order suspended for two-year probationary period)	N
8/16/2021	<a href="#">Dynatex International (U.S.)</a> <i>Semiconductor Manufacturing</i>	China	15 C.F.R. § 764.2(d) 2015-2020	EAR99 - Scribe and Break Tools and Accessories	\$234,530	<b>Monetary Penalty</b> \$469,060	\$469,060	N	N
7/12/2021	<a href="#">Alfa Laval Inc. and Alfa Laval Middle East Ltd. (U.S. and U.A.E.)</a> <i>Fluid Handling System Provider</i>	Iran	15 C.F.R. § 764.2(e) 2015-2016	EAR99 - Automated Tank Cleaning Machines	\$18,585	<b>Monetary Penalty</b> \$215,000	\$215,000	N	N

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
6/28/2021	<a href="#">Patriot 3, Inc. (U.S.)</a> <i>Manufacturer (Military equipment)</i>	Russia	15 C.F.R. § 764.2(e)  2014	8A992 - Jet Boots	\$329,760	<b>Monetary Penalty</b> \$200,000	\$200,000	N	N
6/23/2021	<a href="#">Skyline USA, Inc. (U.S.)</a> <i>Retailer ("self-defense" weapons)</i>	Colombia, Guatemala, Mexico, Nigeria, Pakistan, Panama, Trinidad and Tobago, or Uruguay	15 C.F.R. § 764.2(a) 15 C.F.R. § 764.2(i)  2014-2016	0A978 - Police Batons 0A982 - Handcuffs 0A985 - Stun Guns 1A984 - Pepper Spray	\$50,644	<b>Monetary Penalty</b> \$140,000	\$140,000	N	N

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
6/17/2021	<a href="#">USGoBuy, LLC (U.S.)</a> <i>Package Forwarding</i>	China; U.A.E.; and Iran	15 C.F.R. § 764.2(a)  2015	0A978a - Rifle Scopes	\$1,229	<b>Monetary Penalty</b> \$20,000  <b>Denial of Export Privileges</b> Denial of export privileges imposed and suspended for three-year probationary period  <b>Additional Settlement Requirements</b> Complete external audit by unaffiliated third-party consultant and submit results to BIS	\$20,000	Y (denial order suspended for three-year probationary period)	Complete external audit by unaffiliated third-party consultant  Submit results of audit to BIS
5/28/2021	<a href="#">Photonics Industries International, Inc. (U.S.)</a> <i>Manufacturing</i>	China	15 C.F.R. § 764.2(a) 15 C.F.R. § 764.2(c)  2014	6A005.b.6.b - Picosecond Laser Systems	N/A	<b>Monetary Penalty</b> \$350,000	\$350,000	N	N
5/28/2021	<a href="#">Alsima Middle East General Trading LLC (U.A.E.)</a> <i>Trading Company</i>	U.A.E.	15 C.F.R. § 764.2(a) 15 C.F.R. § 764.2(g)  2015	1C240 - Powder Grade Nickel	N/A	<b>Monetary Penalty</b> \$12,500	\$12,500	N	N

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
5/21/2021	<a href="#">Mahan Airways et. al.</a> (U.S.)					<b>Denial of Export Privileges</b> Renewal of temporary denial order for 180-day period		Y (extended for 180-day period)	N
5/17/2021	<a href="#">TeleDynamics</a> (U.S.) <i>Manufacturing (Electronics, Telecommunications)</i>	Russia; and Ukraine	15 C.F.R. § 764.2(b) 2014	0A987 - Rifle Scopes	\$1,047	<b>Monetary Penalty</b> \$55,000	\$55,000	N	N
5/3/2021	<a href="#">Kleiss &amp; Co.</a> (Netherlands) <i>Manufacturing / Distribution (Pipeline equipment)</i>	Iran	15 C.F.R. § 764.2(e) 2016	EAR99 - Extruded Butyl Sealants	\$20,951	<b>Monetary Penalty</b> \$60,000  <b>Denial of Export Privileges</b> Denial of export privileges imposed and suspended for two-year probationary period	\$60,000	Y (denial order suspended for two-year probationary period)	N
4/30/2021	<a href="#">MDA Precision</a> (U.S.) <i>Manufacturing (Metalworking machinery)</i>	U.A.E.	15 C.F.R. § 764.2(e) 2016	2B201 - Milling Machine	\$34,000	<b>Monetary Penalty</b> \$60,000  <b>Additional Settlement Requirements</b> Complete export compliance training on the EAR and submit verification of attendance to BIS	\$60,000	N	Complete export compliance training on the EAR  Submit verification of attendance to BIS

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
4/29/2021	<a href="#">FLIR Systems (U.S.)</a> <i>Manufacturing / Design</i> <i>(Thermal imagery)</i>	N/A	15 C.F.R. § 764.2(g)  2012-2013	6A002.a.3.f - Thermal Imaging	N/A	<b>Monetary Penalty</b> \$307,922  <b>Additional Settlement Requirements</b> Complete two internal audits of export controls compliance program and submit results of audits to BIS	\$307,922	N	Complete two internal audits of export controls compliance program  Submit results of audits to BIS
4/29/2021	<a href="#">SAP SE (Germany)</a> <i>Cloud-Based Software</i>	Iran	15 C.F.R. § 764.2(a) 15 C.F.R. § 764.2(e)  2009-2019	5D002.c.1 - Software		<b>Monetary Penalty</b> \$3,290,000  <b>Additional Settlement Requirements</b> Complete three internal audits of export controls compliance program and submit results of audits to BIS	\$3,290,000	N	Complete three internal audits of export controls compliance program  Submit results of audits to BIS
4/15/2021	<a href="#">Harsimran Singh and Panther Trading (U.S.)</a> <i>Retailer</i> <i>("self-defense" weapons)</i>	Mexico	15 C.F.R. § 764.2(a) 15 C.F.R. § 764.2(b)  2014	0A982 - Handcuffs 0A985 - Stun Guns 0A978 - Collapsible Batons	\$11,000	<b>Monetary Penalty</b> \$42,000	\$42,000	N	N

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
3/18/2021	<a href="#">Comtech Xicom Technology (U.S.)</a> <i>Satellite Communications</i>	Russia; U.A.E.; and Brazil	15 C.F.R. § 764.2(a) 2015-2017	3A001.b - Traveling Wave Tubes	\$153,395	<b>Monetary Penalty</b> \$122,000	\$122,000	N	N
3/5/2021	<a href="#">MSI Aircraft (Germany)</a> <i>Aircraft Maintenance</i>	Iran	15 C.F.R. § 764.2(d) 2011-2012	EAR99 - Reservoir/Value Assemblies	\$51,921	<b>Monetary Penalty</b> \$51,921  <b>Denial of Export Privileges</b> Denial of export privileges imposed and suspended for three-year probationary period  <b>Additional Probationary Conditions</b> Full cooperation with BIS and OFAC	\$51,921	Y (denial order suspended for three-year probationary period)	Probationary conditions: Full cooperation with BIS and OFAC, including:  Truthful disclosure of information related to potential violations of U.S. export control or economic sanctions laws  Availability for interview, deposition, or other sworn testimony, and identification of potential witnesses  Notification of credible evidence of any violation of U.S. export control or economic sanctions laws

Order Date	Company Name	Destination	Violation / Violation Date	Commodity	Value	Administrative Sanctions	Fine	Denial of Export Privileges	Additional Requirements Imposed
2/1/2021	<a href="#">Princeton University</a> (U.S.) University	United Kingdom (U.K.); Belgium; France; Denmark; Switzerland; Singapore; Canada; China; Japan; and Israel	15 C.F.R. § 764.2(a) 213-2016	1C351, 1C352 or 1C353 – Various Strains and Recombinations of an Animal Pathogen	\$27,000	<b>Monetary Penalty</b> \$54,000  <b>Additional Settlement Requirements</b> Complete external audit by unaffiliated third-party consultant, internal audit reviewing export control function, and two reports describing enhancements made to EAR compliance program, and submit results of audits and reports to BIS	\$54,000	N	Complete external audit by unaffiliated third-party consultant  Complete internal audit reviewing its export control function  Submit results of audits to BIS  Complete two reports describing enhancements made to EAR compliance program
1/29/2021	<a href="#">Avnet Asia</a> (Singapore) Manufacturing (Electronic components)	Iran and China	15 C.F.R. § 764.2(a) 2007-2009	3A001 - Various Electronic Components EAR99 - Various Electronic Components	\$1,222,006	<b>Monetary Penalty</b> \$3,229,000  <b>Denial of Export Privileges</b> Denial of export privileges imposed and suspended for two-year probationary period	\$3,229,000	Y (denial order suspended for two-year probationary period)	N

### **Part 3: DDTC Enforcement of the ITAR**

#### Overview of the DDTC

The U.S. Department of State (“State Department”) is responsible for the export and temporary import of defense articles and services governed by the Arms Export Control Act (“AECA”)<sup>9</sup> and Executive Order 13637 (“E.O. 13637”).<sup>10</sup> The International Traffic in Arms Regulations (“ITAR”),<sup>11</sup> which implements the AECA, is administered by the Directorate of Defense Trade Controls (“DDTC”) in the Bureau of Political-Military Affairs at the State Department. The DDTC is tasked with protecting U.S. national security by restricting and controlling the manufacture, sale, and distribution of defense and military items and services.

#### Executive Summary of DDTC Enforcement of the ITAR

Pursuant to the AECA, DDTC administers the ITAR, which regulates the temporary import and export of defense articles, data, and services. To ensure compliance with the AECA and the ITAR, DDTC reviews voluntary disclosures regarding potential violations and issues directed disclosure requests when it encounters evidence of ITAR violations.

Part 121 of the ITAR, the United States Munitions List (“USML”) contains a list of items and services designated as defense that fall under the export and temporary import jurisdiction of DDTC. A DDTC license is required to export any item, data, or service on the USML.

Part 122 of the ITAR requires all manufacturers, exporters, temporary importers, and brokers of defense articles on the USML and furnishers of defense services to register with the DDTC. Registrants with the DDTC can apply for ITAR export licenses and claim ITAR exemptions.

DDTC works closely with law enforcement to respond to criminal violations of the ITAR. DDTC has close working relationships with the Federal Bureau of Investigation (“FBI”) and with Homeland Security Investigations (“HSI”), the investigative arm of the U.S. Department of Homeland Security (“DHS”). Beyond working with criminal investigators, DDTC works closely with the DOJ and U.S. Attorney’s offices around the U.S. to support criminal prosecutions, including by providing expert testimony and helping prosecutors understand the regulations.

#### ITAR Penalties

Pursuant to the AECA,<sup>12</sup> criminal penalties for ITAR violations may include up to 20 years in prison, \$1 million in fines for each violation, and debarment. Pursuant to the AECA and ITAR, the maximum civil penalties for a civil violation include debarment and a fine of \$1,197,728 per violation.<sup>13</sup> Such penalties are generally settled through a negotiated Consent Agreement, under which companies are required to institute enhanced compliance measures. The Consent Agreement often includes a period of ongoing monitoring and specific conditions that must be met.

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<sup>9</sup> Arms Export Control Act, 22 U.S.C. §§ 2751–2799aa-2.

<sup>10</sup> Administration of Reformed Export Controls, Exec. Order No. 13,637, 78 Fed. Reg. 16,127 (Mar. 13, 2013).

<sup>11</sup> International Traffic in Arms Regulations, 22 C.F.R. §§ 120–130 (2021).

<sup>12</sup> Arms Export Control Act (“AECA”), 22 U.S.C. 2778(c).

<sup>13</sup> International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. § 127.10 (2021)

## ITAR Compliance Implications for Industry

Exporters should:

- Be aware that plans and designs for ITAR-controlled items, including engineering prints showing layouts, dimensions, and geometries, are subject to ITAR enforcement.
- Obtain DDTC authorization before shipping any items subject to the ITAR.
- Take measures to control the sharing of ITAR-controlled technical data by their foreign subsidiaries with unaffiliated entities.

## ITAR Statistics and Trends in 2021

DDTC publishes copies of final settlement documents for ITAR administrative actions, including charging letters, consent agreements, and orders. Since 1978, the DDTC has published documents for 64 dated actions. There is an average of two DDTC actions per year and no year saw more than five DDTC actions. Certain companies, including Boeing, Lockheed Martin, L-3, Raytheon, ITT, Hughes and Security Assistance International have been penalized more than twice. To date, DDTC has only brought two enforcement actions in 2021.

The table below provides an overview of the DDTC enforcement actions in 2021, to date.

Respondent	Honeywell International, Inc.	Keysight Technologies, Inc.
Charging Letter	<a href="#">Unknown Date</a>	<a href="#">Unknown Date</a>
Agreement	<a href="#">4/27/2021</a>	<a href="#">8/3/2021</a>
Order	<a href="#">4/27/2021</a>	<a href="#">8/3/2021</a>
Industry	Aerospace Technology	Electronic Test and Measurement Equipment
Country	U.S.	U.S.
Violation	Arms Export Control Act ("AECA"), 22 U.S.C. §§ 2751–2799aa-2 International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120–130  International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. § 127.1(a)(1)	Arms Export Control Act ("AECA"), 22 U.S.C. §§ 2751–2799aa-2 International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120–130  International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. § 127.1(a)(1)
Civil or Criminal?	Civil	Civil
Number of Violations	34	24
Penalty	\$13,000,000	\$6,600,000
Compliance Allocation	Designated Official for Consent Agreement Compliance and Oversight Strengthened Compliance Policies, Procedures, and Training Automated Export Compliance System Audit Legal Department Support On-Site Reviews by the Department	Designated Official for Consent Agreement Compliance and Oversight Strengthened Compliance Policies, Procedures, and Training Classification Review Audit On-Site Reviews by the Department
Debarment or Denial?	No	No
USML Categories	VIII(i), XI(d), and XIX(g)	XI(d)
Destination	Canada, Ireland, Mexico, China, and Taiwan	China, Russia, Japan, Israel, and Canada

## **Part 4: SEC and DOJ Enforcement of the FCPA**

### Overview of the SEC and the DOJ

The SEC is an independent federal agency tasked with protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

The DOJ is tasked with enforcing U.S. federal law and defending the interests of the U.S. according to federal law, protecting the U.S. public from foreign and domestic threats, punishing unlawful conduct, and ensuring the fair and impartial administration of justice.

### DOJ's New Approach to Enforcement of Export Controls and Sanctions Laws

The DOJ's National Security Division ("NSD") has increased its focus on the export controls and sanctions area in recent years. Notably, on December 13, 2019, the DOJ announced the release of a revised policy for business organizations regarding voluntary disclosures of export control and sanctions violations. The new "Export Control and Sanctions Enforcement Policy for Business Organizations" ("VSD Policy") is designed to encourage companies to voluntarily disclose all potentially willful violations of the AECA, ECRA, and IEEPA directly to NSD.

Pursuant to the VSD Policy, when a company voluntarily self-discloses export control or sanctions violations to NSD, fully cooperates, and timely and appropriately remediates, there is a presumption that the company will receive a non-prosecution agreement ("NPA") and will not pay a fine, absent aggravating factors. Additionally, even if aggravating factors are present and a different criminal resolution is warranted (for instance, a deferred prosecution agreement or guilty plea), companies that have voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated may still benefit from the VSD Policy. For example, companies in such a position will benefit from DOJ not requiring the appointment of a monitor if the company has implemented an effective compliance program, and from the DOJ's according, or recommending to a sentencing court, a fine that is at least 50% less than the amount otherwise available.

On April 29, 2021, the DOJ announced that it had entered into an NPA with SAP SE (see details of the case in *Noteworthy OFAC Sanctions Enforcement Actions in 2021*). As part of a global resolution with DOJ, BIS, and OFAC, SAP SE agreed to pay combined penalties in excess of \$8 million in relation to its alleged violations of the EAR and ITAR. SAP SE received full voluntary self-disclosure credit for its timely and voluntary disclosures to the appropriate agencies and full credit for its cooperation with the DOJ for its thorough internal investigation, proactive identification of issues, and communication with U.S. government agencies. Pursuant to DOJ's VSD Policy, SAP SE was rewarded for its voluntary disclosures made to DOJ's NSD, extensive cooperation, and strong remediation efforts costing over \$27 million with an NPA from DOJ. This case involved the first-ever voluntary self-disclosure of export violations leading to an NPA under DOJ's new VSD Policy. Per the terms of the NPA, the DOJ will not criminally prosecute SAP SE for any crimes related to the conduct described therein. Concurrently with the NPA, SAP entered into administrative agreements with BIS and OFAC concerning the same or similar conduct. Standing as both a strong deterrent against violation of export controls and sanctions laws and a strong incentive for voluntary self-disclosure in the event a violation is discovered, the SAP SE case highlights DOJ's new approach to export enforcement. To date, in 2021, the

SAP SE settlement is the largest export enforcement action taken by DOJ. The DOJ has also taken several export-related enforcement actions against individuals in 2021.

### Executive Summary of SEC and DOJ Enforcement of the FCPA

The FCPA<sup>14</sup> was enacted in 1977 for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to obtain or retain business. The FCPA, through its accounting and anti-bribery provisions, covers two related but distinct situations. First, the FCPA's accounting provisions, which apply to domestic and foreign companies traded on U.S. stock exchanges, require corporations to make reports to the SEC, maintain accurate books and records, and create internal compliance controls. Second, the FCPA's anti-bribery provisions, which apply to activity by securities issuers, U.S. citizens and entities, and certain foreign nationals and entities, criminalize the transfer of money or other gifts to foreign government officials and political actors for purposes of influence to obtain or retain business.

The FCPA is jointly enforced by the DOJ's Criminal Division and the SEC's Enforcement Division. The DOJ has criminal FCPA enforcement authority over issuers, and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf. The DOJ also has both criminal and civil enforcement responsibility for the FCPA's anti-bribery provisions over domestic concerns, and over certain foreign persons and businesses that act in furtherance of a violation of FCPA while in the territory of the United States. The SEC is responsible for civil enforcement of the FCPA over issuers, and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf.

#### *FCPA Accounting Provisions.*

Elements.

- (1) Recordkeeping.
- (2) Internal Controls.

#### *FCPA Anti-bribery Provisions.*

Elements.

- (1) Covered Parties.
- (2) Nexus with Interstate Commerce.
- (3) Anything of Value.
- (4) *Mens rea*: Knowingly/Corruptly/Willfully
- (5) Foreign Official.
- (6) Obtaining or Retaining Business.

Exception and Affirmative Defenses.

- (1) Exception: Facilitation/Grease Payments.
- (2) Affirmative Defense: Payments are Legal In The Country In Which They Are Made.
- (3) Affirmative Defense: Payments are Reasonable and *Bona Fide* Expenditures.

FCPA jurisdiction extends to prohibited conduct by publicly traded companies, their officers, directors, employees, stockholders, and agents anywhere in the world.

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<sup>14</sup> Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd-1–78dd-3, 78m, 78ff.

### FCPA Penalties

Each violation of the FCPA anti-bribery provisions can result in (1) civil monetary penalties of up to \$21,410 for business entities and individuals, and (2) criminal penalties of up to \$2 million in fines for business entities, and up to \$250,000 in fines and up to five years imprisonment for individuals.

Each violation of the FCPA accounting provisions can result in (1) civil monetary penalties of up to \$963,837 for business entities, \$192,768 for individuals, or the gross amount of the pecuniary gain to the defendant as a result of the violation, and (2) criminal penalties of up to \$25 million in fines for business entities, and up to \$5 million in fines and up to 20 years imprisonment for individuals.

Companies that violate the FCPA may also be required to forfeit the proceeds of their crimes, or disgorge the profits generated from the crimes. Violators may also face collateral consequences, including suspension or debarment from contracting with the federal government, cross-debarment by multilateral development banks, and suspension or revocation of certain export privileges.

Pursuant to the Alternative Fines Act,<sup>15</sup> courts may impose fines of up to twice the benefit that the defendant obtained by making the corrupt payment, provided that the facts supporting the increased fines are included in the indictment and either (1) proved to the jury beyond a reasonable doubt, or (2) admitted in a guilty plea proceeding.

### FCPA Compliance Implications for Industry

Companies should conduct adequate due diligence of their subsidiaries, consultants, and sales partners to ensure compliance with the FCPA. Companies should also continually monitor the internal compliance procedures and audits of their subsidiaries.

### FCPA Statistics and Trends in 2021

As of December 2021, there were four FCPA enforcement actions taken against companies.<sup>16</sup>

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<sup>15</sup> Alternative Fines Act, 18 U.S.C. § 3571(d).

<sup>16</sup> On October 19, 2021, SEC entered into a \$99,051,872 settlement agreement with Credit Suisse Group AG, resolving violations of various securities laws, including the internal accounting controls and books and records provisions of the FCPA. This action is not detailed in this digest.

Date	Target	Bribe Amount	FCPA Provisions Violated	Country Where Bribe Occurred	Benefit Incurred as Result of Bribe	Fines
9/24/2021	WPP plc	Total amount unknown:  Unknown (Indian Subsidiary)  \$107,000 and gifts worth \$2,000 (Chinese Subsidiary)  Unknown (Brazilian Subsidiary)  Unknown (Peruvian Subsidiary)	Anti-bribery, 15 U.S.C. § 78dd-1  Books and records, 15 U.S.C. § 78m(b)(2)(A)  Internal accounting controls, 15 U.S.C. § 78m(b)(2)(B)	India China Brazil Peru	\$5,669,596 of unjust enrichment (Indian Subsidiary)  \$3,261,437 in tax savings (Chinese Subsidiary)  \$891,457 of unjust enrichment (Brazilian Subsidiary)  \$291,935 of unjust enrichment (Peruvian Subsidiary)	<b>SEC</b> \$19,224,650
6/25/2021	Amec Foster Wheeler Limited	\$1,100,000	Anti-bribery, 15 U.S.C. § 78dd-3  Books and records, 15 U.S.C. § 78m(b)(2)(A)  Internal accounting controls, 15 U.S.C. § 78m(b)(2)(B)	Brazil	\$17,600,000	<b>SEC &amp; DOJ</b> \$41,139,287
1/8/2021	Deutsche Bank AG	\$7,000,000	Books and records, 15 U.S.C. § 78m(b)(2)(A)  Internal accounting controls, 15 U.S.C. § 78m(b)(2)(B)	Italy U.A.E. China	\$34,000,000	<b>SEC &amp; DOJ</b> \$122,890,828



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