



# Trade Matters

## Lowenstein Sandler's Global Trade & National Security Newsletter

April 2023

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### 1. Russia Sanctions Evasion: Understanding the Red Flags

On March 2, the Department of Commerce, Department of the Treasury and Department of Justice issued a [tri-seal compliance note](#) outlining methods Russia uses to evade sanctions and export controls. Some of the common red flags that indicate a third-party intermediary may be engaged in efforts to evade sanctions or export controls include the following: use of corporate vehicles like shell companies to obscure (i) ownership, (ii) source of funds, or (iii) countries involved, particularly sanctioned jurisdictions; a customer's reluctance to share information about the end use of a product, including reluctance to complete an end-user form; use of shell companies to conduct international wire transfers, often involving financial institutions in jurisdictions distinct from company registration; declining customary installation, training, or maintenance of the purchased item(s); IP addresses that do not correspond to a customer's reported location data; last-minute changes to shipping instructions that appear contrary to customer history or stated business activities; payment coming from a third-party country or business not listed on the end-user statement or other applicable end-user form; use of personal email accounts instead of company email addresses; and transactions involving entities with little or no web presence. Given the proliferation of sanctions and export controls imposed in response to Russia's invasion of Ukraine, multinational companies should be vigilant in their compliance efforts and be on the lookout for possible attempts to evade U.S. laws.

### 2. New Free Trade Agreements Seek to Nix China Nexus

Traditionally, the United States Trade Representative (USTR) pursues free trade agreements (FTAs) with other countries to

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open foreign markets for U.S. goods. However, since Biden appointed Katherine Tai as the USTR, there has been little information outlining the administration's approach regarding market access for U.S. goods. Thus, her comment during a March 24 hearing before the House Ways and Means Committee was somewhat surprising: "we are not pursuing traditional fully liberalizing trade agreements, because we see those as part of the problem we are correcting for." She explained that the issue with negotiating an FTA with Taiwan or anywhere in East Asia is that in any agreement, rules of origin allow some proportion of a good's inputs to be from China and the Biden administration does not want any trade agreement that includes China in its supply chain.

### 3. CBP Launches UFLPA Enforcement Dashboard

On March 14, U.S. Customs and Border Protection (CBP) unveiled its new [Uyghur Forced Labor Prevention Act \(UFLPA\) Enforcement Statistics dashboard](#). The dashboard includes data on CBP's enforcement activities under the UFLPA, such as the number of shipments stopped by CBP, the number of shipments released, shipment value totals, industries involved, and countries of origin. To date, CBP has stopped 3,237 shipments under the UFLPA, valued at \$961 million. Of the 3,237 shipments stopped, CBP denied 424 shipments (15.3 percent), released 1,090 shipments (33.7 percent), and has yet to rule on the remaining 1,653 shipments (51.1 percent). Note that enforcement under the UFLPA is not limited to items with China as the legal country of origin. Rather, enforcement is based on the origin of the raw materials used to produce the goods. In fact, the total value of Malaysia-origin or Vietnam-origin imports stopped by CBP under the UFLPA is far higher than the total value of China-origin goods stopped. So, regardless of industry or the country of origin of the relevant goods, companies should be taking proper steps to ensure they can demonstrate that the articles they import do not contain content from the Xinjiang Uyghur Autonomous Region.

### 4. Required Department of Commerce Filings

The Bureau of Economic Analysis' (BEA) [BE-12 benchmark survey](#) is due May 31, or by June 30 for reports submitted via eFile, and must be filed by all U.S. entities in which a foreign investor directly or indirectly owns or controls a 10 percent or greater voting interest. The benchmark survey is conducted every five years, replaces the annual BE-13 filing requirement for the relevant year, and is mandatory. Failure to file or provide accurate data can result in civil penalties or criminal penalties. The filing is confidential. The BEA uses these surveys to track the scale of foreign investment activities in the United States and publishes the anonymized results.

### TRADE TIP OF THE MONTH: 'Sanctions are the new FCPA'

On March 2, Deputy Attorney General Lisa Monaco delivered [remarks](#) to the American Bar Association National Institute on white-collar crime, reiterating her previous comment that "sanctions are the new FCPA." Monaco's speech outlined the Department of Justice's (DOJ) continued focus on corporate accountability and national security, including export controls. The DOJ announced plans to hire at least 25 new prosecutors within the National Security Division and devote more resources to the effort of

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investigating and prosecuting corporate sanctions violations and other corporate crimes. With the DOJ investing more in enforcement efforts, companies should do the same to address their compliance risks.

## Additional Resources

- **Upcoming Webinar:** "G-BRIDGE Lunch & Learn Series - Session 2: Information Security and National Security: Tech Focus"  
April 19, 2023  
*Lowenstein Sandler LLP*  
Kathleen A. McGee, Jeffrey B. Jones  
**\*RSVP HERE**
- **Article:** "How Well Do You Know Your Customer?"  
March 23, 2023  
*National Association of Credit Management*  
Doreen M. Edelman
- **Client Alert:** "Silicon Valley Bank Collapse: Insurance Considerations For Expected Increase in Cybercrime and Enforcement Activity"  
March 23, 2023  
*Lowenstein Sandler LLP*  
Eric Jesse, Alexander B. Corson
- **Client Alert:** "Silicon Valley Bank: A Timeline and Summary of Events"  
March 13, 2023  
*Lowenstein Sandler LLP*  
Rossie E. Turman III, Lowell A. Citron, Matthew R. Vandergoot, Raquel Smith



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