



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

May 2023

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1. Recent Enforcement Includes Largest Standalone BIS Penalty

- **Sale of foreign goods made with U.S. technology triggers largest standalone penalty**

On April 19, the Bureau of Industry and Security (BIS) issued a record **\$300 million fine** to Seagate Technology for violating U.S. export controls by making sales to Huawei. Between August 2020 and September 2021, various Seagate entities exported and transferred (in-country) more than 7.4 million foreign hard drive disks subject to the EAR as FDPs of U.S. technology to Huawei entities on the BIS Entity List. The BIS penalty is more than twice what BIS estimates to be the company's net profits for the alleged illegal sales. As part of the settlement agreement, Seagate agreed to a mandatory multiyear audit and a five-year suspended Denial Order.

- **Uphold HQ Inc. settles OFAC charges related to failure to follow up on customer red flags**

On March 31, the Department of the Treasury's Office of Foreign Assets Control (OFAC) announced a **settlement agreement with digital asset platform Uphold HQ Inc.** for violations of U.S. sanctions. Between March 2017 and May 2022, Uphold and its affiliates processed 152 transactions totaling over \$180,000 for customers who self-identified as being located in Iran or Cuba or as employees of the government of Venezuela. For example, customers would (1) submit their address location by selecting a non-sanctioned country from a drop-down menu, but then indicate their actual location in a sanctioned location (e.g., Iran) in a free text address field, or (2) provide an ID from a sanctioned jurisdiction—and Uphold failed to screen or flag this information for sanctions compliance. OFAC expects companies to use all information available to determine their compliance with sanctions, even if the information is not collected for sanctions compliance purposes.

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for more information about any matters in this newsletter:

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- **General Motors LLC settles discrimination allegations related to export compliance hiring assessments**

On April 18, the Justice Department announced a [settlement agreement with General Motors](#) to resolve the allegations that GM discriminated against non-U.S. citizens and violated the Immigration and Nationality Act (INA) when undertaking export control checks during hiring procedures. The Justice Department alleged that GM's export compliance team unnecessarily required lawful permanent residents (who under export regulations are authorized to access U.S. technology) to provide an unexpired foreign passport as a condition of employment, creating a discriminatory barrier and inappropriately mixing GM's export compliance assessment and employment eligibility checks. Export control laws do not provide justification for or authorize employers to discriminate against non-U.S. citizens in violation of the INA. In an effort to help employers understand their obligations and avoid violations under INA when complying with export control laws, the Department of Justice has issued a [fact sheet](#).

- **British Tobacco settles allegations of scheme to sell tobacco in North Korea**

On April 25, OFAC announced a [\\$508 million settlement agreement with British American Tobacco p.l.c. \(BAT\)](#) to resolve its apparent violations of U.S. sanctions. The settlement is OFAC's largest with a nonfinancial institution and is equal to the statutory maximum civil monetary penalty, reflecting OFAC's determination that the violations were egregious and not voluntarily self-disclosed. According to the settlement, BAT conspired to export tobacco products to North Korea via a joint venture between a BAT Singapore subsidiary and a North Korean company that BAT had "sold" to another Singaporean company for 1 Euro. In reality, BAT retained full control of the venture. Between 2009 and 2016, the North Korean company remitted over \$250 million in U.S. dollar payments to the Singapore company (and eventually BAT) through a complex system that involved OFAC-sanctioned banks. BAT took steps to conceal its connections to the payments. "Companies that seek to profit from circumventing sanctions by obscuring their involvement will be discovered and will pay a price," said Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian E. Nelson. Under the terms of the settlement agreement, BAT agreed to submit an annual report for five years confirming that BAT has implemented and continues to maintain sanctions compliance measures outlined in the settlement agreement. If OFAC determines that BAT materially breaches this agreement, OFAC will reopen its investigation.

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2. The United States and Allies Endorse Code of Conduct Linking Export Controls and Human Rights

The United States and over 20 other countries recently endorsed a "Code of Conduct for Enhancing Export Controls of Goods and Technology That Could be Misused and Lead to Serious Violations or Abuses of Human Rights" (Code). The voluntary, nonbinding [Code](#) outlines a commitment to applying export control tools to prevent the proliferation of goods, software, and technologies that enable serious human rights abuses. The Code calls for governments to consider human rights when reviewing potential exports of dual-use goods, software, or technologies and to consult with relevant representatives on human rights concerns from the private sector, academia, and civil society. It also encourages countries to enforce their export controls in line with international human

rights. The countries endorsing the Code also committed to ongoing meetings to further the goals of the Code and to increase collaboration and coordination.

3. BIS Issues Policy Memo to Incentivize Disclosures

On April 18, the Assistant Secretary for Export Enforcement at BIS, Matthew Axelrod, issued a [memorandum](#) clarifying BIS policies regarding voluntary self-disclosures (VSDs). First, BIS outlined the benefits that companies that submit a VSD receive and noted that the agency will consider it an aggravating factor when a possible significant violation has been uncovered but no VSD has been submitted. Additionally, BIS outlined its whistleblowing policy related to disclosing the conduct of unrelated entities and encouraged entities to use its confidential reporting form. BIS made clear it does not want companies to suffer in silence while their competitors benefit from noncompliance with export regulations. Such tips will be considered as a mitigating factor in any future enforcement action for the disclosing company. Under the Treasury Department's Financial Crimes Enforcement Network whistleblower program, monetary rewards are also potentially available if the disclosure involves a sanctions violation. These policy clarifications on disclosures are another reflection of the U.S. government's increased focus on effective compliance.

TRADE TIP OF THE MONTH: Review China-Related Risk Disclosures

The Biden administration has been increasingly targeting China with trade regulations, creating geopolitical risk for multinational companies. Public companies should regularly review their country risk disclosures to take into account the increasing regulations on trade with China.

Additional Resources

- **Article:** "[Watch: Stopping Dangerous Foreign Technology From Entering the U.S.](#)"
April 21, 2023
Supply Chain Brain
Laura Fraedrich
- **Article:** "[Leveraging New Supply Chain Law to Increase Sales and Lower Costs](#)"
April 21, 2023
Chain Store Age
Andrew Bisbas
- **Client Alert:** "[Material Investment Management Developments and Template Annual Compliance Checklists for Registered Investment Advisers, Exempt Reporting Advisers, Commodity Pool Operators, Commodity Trading Advisers, and Private Fund Managers](#)"
April 6, 2023
Lowenstein Sandler LLP
Scott H. Moss, Brian A. Silikovitz, Andrew E. Graw, Doreen M. Edelman, Megan Monson, George Danenhauer, Michael J. Scales, Jessica Billeter
- **Article:** "[RESTRICTing Free Speech and Free Trade](#)"
April 24, 2023
Industry Today
Laura Fraedrich

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