



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

October 2023

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1. Seagate Technology Gets Largest-Ever BIS Penalty for Sales to Huawei

Seagate Technology LLC recently incurred a **\$300 million civil penalty** from U.S. Department of Commerce's Bureau of Industry and Security (BIS) due to alleged violations of U.S. export controls. These violations stemmed from Seagate's sale of hard disk drives to Huawei Technologies Co. Ltd., a breach of the foreign direct product (FDP) rule. Remarkably, this case represents the largest stand-alone administrative penalty ever imposed by BIS. Seagate's penalty also included required multiyear audits and a five-year suspended denial order, highlighting a stringent regulatory environment that now includes criminal reviews. The Seagate case serves as a pivotal example of the consequences companies may face when navigating complex export regulations; it highlights the importance of stringent compliance measures in today's regulatory environment.

2. 3M Settles Iran Sanctions Violations

On September 21, the Office of Foreign Asset Controls (OFAC) announced a **\$9.6 million settlement** with 3M, a global manufacturing company, to settle the company's violations of OFAC sanctions in Iran. In 2015, a Dubai subsidiary contracted with a German company to sell sheeting materials that 3M believed would be used to manufacture license plates for export to Iran, using an OFAC general license authorizing foreign subsidiaries of U.S. companies to do business in Iran. However, 3M screened only the German company against sanctions lists because it was classified as the end user. The German company told 3M's Dubai and Swiss subsidiaries that the real end user was a sanctioned economic collaborative controlled by Iran's law enforcement forces, but the subsidiaries did not disclose this to the company's trade compliance office, and they

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concealed these facts when the Swiss subsidiary renewed the contract. Due to the managers' willful and knowing actions, OFAC determined the violations were egregious.

3. BIS Warns Exporters of Risk of Diversion of Tech Items to Russia/Belarus

On September 14, the Department of Commerce's Bureau of Industry and Security (BIS) issued a [notice](#) listing 45 "common high-priority items" that Russia seeks for its weapons programs and war effort that are therefore at high risk of being diverted to Russia or Belarus in violation of U.S. export controls. This follows joint BIS/Financial Crimes Enforcement Network (FinCEN) alerts identifying certain items at high risk of diversion in [June 2022](#) and [May 2023](#). The new list includes electronic integrated circuits, radar apparatus, capacitors, navigational instruments, semiconductors, and parts for airplanes, helicopters, and unmanned aircraft. Companies should apply a heightened level of due diligence to such exports. Each time a company exports a high-diversion-risk item, it should screen the transaction for the red flags listed in the 2022 and 2023 joint BIS/FinCEN alerts and ensure none exist before proceeding. BIS has also released [guidance](#) on related best practices to assist the industry in performing heightened due diligence on such exports.

4. Is Your Company Prepared for the Corporate Transparency Act?

Effective January 1, 2024, the Corporate Transparency Act (CTA) mandates that any entity meeting the definition of a "reporting company" must identify and report beneficial ownership information to FinCEN within 30 days (for any entity formed on or after January 1, 2024) or by December 31, 2024 (for any entity formed prior to January 1, 2024). The term "reporting company" includes corporations, limited liability companies, limited liability partnerships, and any other entity created by a filing with the secretary of state or any similar office under the laws of its domicile state or Indian tribe. This covers both domestic and foreign entities if the foreign entity is registered to do business in any U.S. state pursuant to a state filing. There are 23 exemptions to the term "reporting company"; if an exemption applies, then beneficial ownership information need not be reported to FinCEN. Our prior client alert on the CTA can be found [here](#).

5. Final National Security Guardrails for CHIPS for America Incentives Program

On September 22, the Department of Commerce released the final rule implementing the national security guardrails of the [CHIPS and Science Act](#), which was enacted to boost domestic research and manufacturing of semiconductors in the United States. The rule establishes standards to restrict expansion of advanced facilities in foreign countries of concern, limits expansion of legacy chip facilities in foreign countries of concern, and details restrictions on joint research and technology licensing efforts with foreign entities of concern.

6. Section 301 Product Exclusions Extended Through December 31

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On September 11, the Office of the United States Trade Representative (USTR) **extended** until the end of the year all the China Section 301 tariff exclusions that were set to expire on September 30. The extended exclusions include **352 general** (non-COVID-19) exclusions, covering a broad range of products including animal-feeding machinery, woven fabrics, and water heaters. The other 77 extended exclusions cover **COVID-related products**, including face shields and hand pumps for liquids. The USTR has granted this shorter-term extension to give it more time to complete its ongoing four-year review of the Section 301 tariffs, which may lead to further extensions, exclusions, or tariff code removals.

TRADE TIP OF THE MONTH: More Congressional Pressure for Further China Sanctions

The House Financial Services Committee recently advanced **legislation** that would impose the most severe set of financial restrictions on many Chinese companies, including Huawei and China Semiconductor Manufacturing Corp. The bill would require the Treasury Department to annually determine whether companies on the Non-Specially Designated National Chinese Military Industrial Complex List should be sanctioned. While the proposed law may not pass and be implemented, it is clear that more pressure is coming to deter U.S. investment in Chinese companies. The House Select Committee on the Chinese Communist Party held **a field hearing** on the mutual fund industry's continued investment in Chinese companies that are sanctioned or subject to other controls. Former SEC Chairman Jay Clayton stated in his testimony that the U.S. should consider a program that would require large U.S. public companies with significant exposure to China to disclose the extent of their exposure as well as the "expected effects on their operations, business and prospects, if the U.S. and China were to substantially and adversely alter their economic ties."

Additional Resources

- **Article:** "Your Company Could Be Subject to Chinese Investment Ban — and You May Not Know"
September 27, 2023
Corporate Compliance Insights
Doreen M. Edelman, Christian C. Contardo, Kei Komuro
- **Client Alert:** "Cyber Incident Reporting Requirements To Be Implemented Under the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA)—NPRM Expected Late 2023–Early 2024"
September 12, 2023
Global Trade & National Security Client Alert
Abbey E. Baker, Kei Komuro

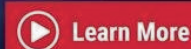


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