View this email in your browser

Lowenstein Sandler

Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

April 2024

Share:

1. Enforcement Roundup–CBP, OFAC, and FCPA

- **Ford Motor Company Agrees to $365M Settlement for Attempted Tariff Engineering**
  Ford has agreed to settle the long-standing dispute over the tariff classification of vans imported from 2009 to 2013. At the time, Customs and Border Protection (Customs) assessed duties on cargo vans at the rate of 22.5 percent. To avoid this high rate, Ford installed rear seats and other temporary features to make the vans appear to be passenger vehicles. After the vehicles cleared Customs, Ford removed the rear seats and restored the vehicles to their original form as two-seat cargo vans. The government alleged that during the same period, Ford also undervalued the cargo vans to reduce tariffs. The $365 million settlement, one of the largest in recent history, resolves allegations brought by the Department of Justice (DOJ) after an investigation coordinated with Customs.
- **Oil Trader Gunvor to Pay $665M for Ecuadorean Bribe Scheme**
  Gunvor S.A. pleaded guilty to violations of the Foreign Corrupt Practices Act (FCPA) and will pay $665 million to resolve the DOJ's investigation into the company's scheme to bribe Ecuadorean officials. Gunvor and its co-conspirators paid more than $97 million, knowing the funds would be used to bribe Ecuadorean officials to secure business contracts worth more than $384 million from Petroecuador, Ecuador's state-owned oil company. This settlement reflects the recent enforcement push by U.S. officials against corruption and misconduct in the commodities sector.
- **Swiss Finance Company to Pay Almost $4 Million for Sanctions Violations**
  On March 14, the Office of Foreign Assets Control (OFAC) settled with EFG International AG, a global private bank group, over multiple apparent violations of U.S. sanctions programs. EFG agreed to pay $3,740,442 for processing

Contact Us

for more information about any matters in this newsletter:

Doreen M. Edelman
Partner
Chair, Global Trade & National Security
202.753.3808
dedelman@lowenstein.com

Laura Fraedrich
Senior Counsel
202.753.3659
lfraedrich@lowenstein.com

Abbey E. Baker
Counsel
202.753.3806
abaker@lowenstein.com

Andrew Bisbas
Counsel
202.753.3807
abisbas@lowenstein.com

Christian C. Contardo
Counsel
202.753.3804
ccontardo@lowenstein.com

transactions on behalf of customers in Cuba, an individual blocked under the Kingpin Act, and a designated Russian individual. Foreign financial institutions with U.S. omnibus accounts need to ensure they screen their customers against OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) and properly notify U.S. custodians upon identifying a client subject to sanctions.

2. Another Section 301 Case Against China: Shipbuilding

The United Steelworkers and other labor unions filed a petition before the Office of the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974 to investigate unfair trade practices in China's shipbuilding sector. The group asserts that Chinese authorities have seized market share in the global maritime industry and suppressed prices, which threatens to discriminate against the U.S. shipbuilding industry, disrupt supply chains, and undermine vital national security interests. USTR will review the petition and may open an investigation. Under the statute, USTR can impose duties on goods from China, as it did in 2018 (to counter China's failure to protect U.S. intellectual property), or it can impose non-tariff measures.

3. Biden Restricts Sales of Sensitive Personal Data

On February 28, President Biden signed Executive Order 14117 to restrict the sale of sensitive U.S. personal data to China, Russia, Iran, North Korea, Cuba, and Venezuela. The EO focuses on genomic data, biometric data, personal health data, geolocation data, financial data, and certain kinds of personal identifiers, and it requires the DOJ to issue regulations that will identify, prohibit, and restrict "covered data transactions of bulk sensitive U.S. personal data or U.S. government data to countries of concern." The DOJ issued an advance notice of proposed rulemaking seeking comments from potentially affected businesses and other industry members on definitions of key terms, the scope of the data categories, and the scope of covered data transactions. Comments are due by April 19 via the eRulemaking Portal.

4. Court of International Trade Questions Likelihood of Success in UFLPA Case

In a February 27 opinion, the Court of International Trade (CIT) denied Ninestar Corporation's motion to stay the government's listing of Ninestar on the Uyghur Forced Labor Prevention Act (UFLPA) Entity List. The CIT ruled that Ninestar, a manufacturer and seller of laser printers and printer-related products, would not likely succeed on the merits. According to the CIT, the interagency Forced Labor Enforcement Task Force (FLETF) adequately explained its listing decision, which was based on corroborated information from an informant. The CIT also found that Ninestar did not demonstrate irreparable harm, since financial losses and reputational damage due to the listing were predictable consequences that Congress likely foresaw when it authorized the creation of the UFLPA Entity List. The ruling suggests that companies seeking to be removed from the UFLPA Entity List will be fighting an uphill battle.

5. United States Ends Old Curbs on Zimbabwe But

Jeffrey B. Jones
Special Counsel
202.753.3769
jejones@lowenstein.com

Kei Komuro
Associate
212.419.5948
kkomuro@lowenstein.com

Megan C. Bodie
Administrative Specialist
202.753.3809
mbodie@lowenstein.com

Sanctions Its President

Biden terminated the Zimbabwe Sanctions Program in a move to clarify that the intention of the Zimbabwe Sanctions is not to harm the people of Zimbabwe but to specifically target bad actors. However, to continue restrictions on the relevant parties of concern, the Treasury Department designated 11 individuals and three entities in Zimbabwe, including President Emmerson Mnangagwa, pursuant to the Global Magnitsky Sanctions.

6. Tri-Seal Compliance Note: Foreign Entities Ignore Sanctions and Export Controls at Their Peril

The Commerce, Treasury, and Justice departments issued their latest Tri-Seal Compliance Note, a pointed reminder of the obligations of non-U.S. persons to comply with U.S. sanctions and export control laws. The note highlights the broad extraterritorial reach of U.S. export controls and sanctions laws, along with recent enforcement actions against foreign entities and foreign affiliates of U.S. entities, including the 2023 $300 million settlement with Seagate Technology LLC. The three agencies offer unified guidance to help foreign persons mitigate their risks, including employing a risk-based approach to sanctions compliance and developing and routinely updating a sanctions compliance program, ensuring that know-your-customer information is appropriately integrated with compliance screening protocols, and training subsidiaries and affiliates on U.S. sanctions and export controls requirements to effectively identify red flags.

7. Biden Administration Initiates Inquiry Targeting 'Connected Vehicles'

The U.S. Department of Commerce issued an advance notice of proposed rulemaking on the development of regulations to secure and safeguard the Information and Communications Technology Services (ICTS) supply chain for connected vehicles. This is the first use of the ICTS rules, which Commerce implemented to prohibit or impose mitigation measures on any subject ICTS transaction with a nexus to foreign adversaries (such as China) that poses risks to U.S. national security or U.S. persons. Industry members and the public can comment via the eRulemaking Portal or by email directly to connectedvehicles@bis.doc.gov on or before April 30.

8. Biden Signs Bill Adding USDA to CFIUS

On March 9, Biden signed into law an appropriations package that includes a provision that adds the agriculture secretary to the Committee on Foreign Investment in the United States (CFIUS). This addition comes after the U.S. Government Accountability's Office January report on the shortcomings in tracking foreign investments in U.S. agricultural land.

TRADE TIP OF THE MONTH: "Don't Let This Happen to You!"

On March 1, 2024, the Office of Export Enforcement released an updated report on export and anti-boycott enforcement cases. Recent enforcement efforts relate to

disruptive technologies and stopping the sharing of these technologies with our adversaries. The enforcement agencies are coordinating their efforts and working with U.S. allies (the E-5 and Japan and Korea). In 2023, there were more enforcement cases than before; the Bureau of Industry and Security also issued the largest administrative stand-alone penalty ever ($300 million). Review past cases, current penalties, and compliance guidance in "Don't Let This Happen to You!"

Additional Resources

- **Client Alert:** "Don't pop the champagne; the CTA isn't dead ... yet."
  March 4, 2024
  Anti-Money Laundering Client Alert
  Robert A. Johnston Jr., Melissa L. Wiley, Paula A. Ladd, Samantha Sigelakis-Minski