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Citigroup Pays $217,841 to Settle OFAC Sanctions Charges

A company's export compliance is only as strong as its screening software's fuzzy logic, especially when distinguishing between similar customer names and blocked entities. Citigroup learned this lesson the hard way, agreeing Sept. 3 to pay Treasury's Office of Foreign Assets Control (OFAC) $217,841 to settle eight charges of violating Iranian and other U.S. sanctions, in part because of screening failures.

> From 2010 to 2012, Citi allegedly processed four funds transfers totaling $133,786.73 for entities on OFAC's List of Specially Designated Nationals (SDN). "Citibank's interdiction software did not identify references to the sanctioned parties in the payment instructions, and the bank processed the payments straight through without manual intervention," the agency charged.

OFAC claimed Citi missed the similarity between "for" and "of" when it processed a transfer for a third-country financial institution's customer, the Higher Institute for Applied Science and Technology, although the Higher Institute of Applied Science and Technology in Syria was on the SDN list. Citigroup took remedial action to ensure that specific name variations were added to its interdiction filter, and implemented a programmatic fix in response to that violation, OFAC noted.

OFAC also charged that Citigroup Trade Services Malaysia (Citi Penang) processed four bill collection applications totaling $638,074.15 for Citibank Hong Kong for shipments to Iran and the Islamic Republic of Iran Shipping Lines (IRISL). Citi Penang operators did not review or screen documents that referred to Iran and/or IRISL, the agency said.

Citigroup voluntarily self-disclosed the four transactions processed by Citi Penang but not those processed by Citibank. "Citi administers a comprehensive and robust global sanctions compliance program," said Molly Millerwise Meiners, Citi's director, corporate communications, in an email to WTTL. "We are pleased to have reached this settlement and remain committed to complying with OFAC requirements," she added.

BIS to Do Foreign Availability Assessment of Etching Equipment

In response to claims from the Semiconductor Equipment and Materials International (SEMI) industry association, Bureau of Industry and Security (BIS) Sept. 8 is launching a

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rare foreign availability assessment of anisotropic plasma dry etching equipment in China. Equipment is currently controlled under Export Control Commodity Classification Number (ECCN) 3B001.c.

> "The SEMI claim asserts that anisotropic plasma dry etch equipment of comparable quality to those subject to control under 3B001.c are available-in-fact from Chinese sources in sufficient quantities to render the U.S. export control of the etch equipment ineffective," the Federal Register notice said. The etching equipment in China is allegedly designed or optimized to produce critical dimensions of 65 nm or less; and within-wafer non-uniformity standard deviation equal to or less than 10% 3σ measured with an edge exclusion of 2 mm or less, BIS said.

In the notice, BIS requested comments on the subject, which should include: product names and model designations; names and locations of Chinese companies that produce and export indigenously-produced equipment; Chinese production quantities, sales and/or exports; data on U.S. imports of Chinese anisotropic plasma dry etch equipment, and/or testing and analysis of such dry etch equipment; and estimates of the economic impact on U.S. companies of the export controls on the U.S. dry etch equipment.

This type of semiconductor etching equipment is used in the production process of a variety of dual-use semiconductor devices such as flash memories, microwave monolithic integrated circuits, transistors and analog-to-digital-converters. The devices are suitable for use in a variety of both civil and military applications that include different types of radars, point-to-point radio communications, microprocessors, cellular infrastructure, and satellite communications, the agency added.

Growing Concerns about China's Anti-Monopoly Enforcement

U.S. firms operating in China are increasingly concerned about how China's nascent anti-monopoly law is being enforced and the potential targeting of foreign companies in China, according to the U.S.-China Business Council (USCBC). Although the Chinese agencies enforcing the Anti-Monopoly Law (AML), which came into force in 2008, are also examining domestic firms, U.S. companies have raised questions about the fairness and due process of procedures the agencies follow and the suspicion that enforcement is being used to help favored Chinese industries at the expense of foreign investors.

> "In recent months foreign companies appear to have faced increasing scrutiny," said a statement by USCBC President John Frisbie, citing a survey of U.S. firms in China. "Targeted or not, foreign companies have well-founded concerns about how investigations are conducted and decided. Due process, transparency, and the methodology for determining remedies and fines all need improvement," he added.

Under the AML, three Chinese agencies enforce various parts of the law. The Ministry of Commerce's (MOFCOM) Anti-Monopoly Bureau reviews merger and acquisition transactions; the State Administration of Industry and Commerce's (SAIC) Anti-Monopoly and Anti-Unfair Competition Bureau investigates non-price-related monopolistic behavior; and the National Development and Reform Commission's (NDRC) Price Supervision and Anti-Monopoly Bureau enforces price-related conduct. Although USCBC monitoring of these agencies has found them examining both foreign and domestic companies, the attention paid to foreign multinationals is getting more publicity.

> "The level of concern has been raised in part by high-profile reporting on investigations of foreign companies – not only in western media, but also in China's domestic media, which has covered foreign-related investigations much more extensively than those of domestic companies and fueled questions about fair and equal treatment," the report notes.

"As companies have learned more about NDRC investigations, concerns have arisen about the methods and procedures for examining anti-competitive behavior. These concerns include due process, treatment of foreign and domestic firms, the influence of industrial policy in launching and conducting investigations, and how key terms such as 'fair price' are interpreted by Chinese regulators," the report adds.

A USCBC survey identified these main concerns about AML enforcement: fair treatment and nondiscrimination; lack of due process and regulatory transparency; lengthy time periods for merger reviews; role of non-competitive factors in competition enforcement; determination of remedies and fines; and broad definition of monopoly agreements.

Officials Tout National Export Initiative Despite Failure

Obama administration officials continue to tout the success of the president's National Export Initiative (NEI) even though the effort has barely reached 50% of its goal of doubling U.S. exports in five years. On a conference call with reporters Sept. 2, Commerce Secretary Penny Pritzker called the NEI "catalytic and a remarkable success." Along with U.S. Trade Representative (USTR) Michael Froman, she used the call to announce two new Commerce reports calculating export jobs by state and metropolitan area.

> When asked why NEI has failed to double exports since 2009, Pritzker ducked the question. "The NEI has met its goal in many, many cities," she said, citing Columbus, Ohio, whose mayor was on the call with her.

The report found only seven metropolitan areas that have doubled exports since 2009: San Antonio (up 339%); Lake Charles, La., (up 334%); Beaumont, Texas, (up 251%); New Orleans (up 196%); Charlotte, N.C., (up 158%); Kingsport, Tenn., (156%); and Davenport, Iowa (up 102%). The two reports used two sets of existing Census data to come up with the jobs numbers: the Origin of Movement (OM) series and the U.S. Metropolitan Statistical Areas (MSAs) series.

Based on those data, Commerce extrapolated that exports in 2013 supported 11.3 million jobs, including 7.1 million goods-related jobs and 4.2 million service-related jobs. A Commerce more than 20 years ago said there were 7.2 million jobs related to goods exports in 1990. Not surprisingly, the largest sources of export-related jobs were states and cities with major manufacturing sectors or ports.

As a result, the largest industrial states also are the top export-related job states: Texas, California, Washington, Illinois, New York and Michigan. They are also home to the largest exporting MSAs: Houston-Woodlands-Sugar Land, Texas, with total export value of $115.0 billion in 2013; New York-Newark-Jersey City ($106.9 billion); Los Angeles-Long Beach-Anaheim ($76.3 billion); Seattle-Tacoma-Bellevue ($56.7 billion); and Detroit-Warren-Dearborn ($53.9 billion). These MSAs are major sources of exports of oil, chemicals, civil aircraft, cars and various industrial goods.

In the report based on the OM, Census concedes the numbers don't necessarily reflect the jobs supported in those states by exports. "The OM series generally provides export data based on the state from which the export began its journey to the port of export," it noted.

"However, in some cases, the origin of movement does not reflect the state from which the export was initially transported," it said. For example, shipments that are consolidated may reflect where the consolidation occurred. This is particularly the case with farm goods shipped down the Mississippi River to New Orleans, which makes Louisiana one of the biggest exporting states.

Treasury Clarifies Sanctions on Russian Debt Instruments

Treasury's Office of Foreign Assets Control (OFAC) has tried to clarify confusion over how banks and investors can comply with the complex sanctions the U.S. imposed on transactions involving Russian debt of more that 90-days maturity. On its website Aug. 27, OFAC posted new Frequently Asked Questions (FAQ) that are intended to explain what types of investments can still be made in Russia without violating the sanctions.

The sanctions imposed on Russia July 29 after the shooting down of Malaysian Airlines Flight 17 prohibit U.S. persons from dealing in Russia bonds, equity and debt instruments with a maturity of greater than 90 days, but the FAQs reflect how complicated some financial deals can be (see **WTTL**, Aug. 4, page 5). Among the several questions addressed was one on what prohibition applies to "new equity" under OFAC directives when dealing with entities on its Sectoral Sanctions Identification (SSI) List.

"The equity prohibitions in Directive 1 pursuant to Executive Order 13662 pertain to equity issued, directly or indirectly, by an SSI entity on or after the effective date of the sanctions," one FAQ states. "Directive 1 does not prohibit U.S. persons from dealing with an SSI entity as counter-party to transactions involving equity issued by a non-sanctioned party," OFAC advised.

While the directives prohibit U.S. persons from dealing in debt of longer than 90-days maturity, they "do not prohibit U.S. persons from dealing with an SSI entity as counter-party to transactions involving debt issued on or after the effective date by a non-sanctioned party," it said. This would allow dealing in a loan to a non-sanctioned third-party, dealing with an SSI entity that is the underwriter or accepting payment under a letter of credit "so long as the SSI entity is not the borrower," it advised.

OFAC also said "U.S. persons are not prohibited from dealing in new equity with an SSI entity sanctioned under Directive 1 if the SSI entity is not the issuer of the equity." Nor is a U.S. person prohibited by Directive 1 or 2 "from engaging in transactions necessary to exit or replace its participation in a long-term loan facility that was extended to an SSI entity prior to the effective date of the sanctions," OFAC said. Other advice will allow U.S. persons to extend credit to non-sanctioned parties to purchase goods or services from an SSI entity that is not the indirect borrower. But "U.S. persons may not deal in a drawdown or disbursement initiated after the effective date of the sanctions with a repayment term of longer than 90 days if the terms of the drawdown or disbursement are negotiated or re-negotiated on or after the effective date," it stated.

> Also prohibited are deferred purchase agreements extending payment terms of longer than 90 days to an SSI entity. Such agreements would constitute a prohibited extension of credit to an SSI entity "if the terms were longer than 90 days and the agreement was entered into on or after the effective date of the sanctions," the agency advised.

OFAC Sanctions Iranian Fronts, Aliases and Banks

Just because the U.S. has eased some sanctions on trade with Iran as part of the Joint Plan of Action (JPOA) reached under the ongoing P5+1 negotiations to restrict its Tehran's nuclear program, it hasn't stopped imposing new sanctions on the country. In the latest move, Treasury's Office of Foreign Assets Control (OFAC) added 25 Iran-linked entities and individuals to its Specially Designated Nationals (SDN) list Aug. 29.

> Those named "are involved in expanding Iran's proliferation program, supporting terrorism in the region, and helping Iran evade U.S. and international sanctions," said Under Secretary for Terrorism and Financial Intelligence David Cohen in a statement. "During this JPOA extension period, as we fulfill our commitment to provide targeted sanctions relief, we remain committed to enforcing existing sanctions against Iran," he added.

In addition to adding new individuals and identifying aliases for some previously named persons, OFAC added Nefertiti Shipping to the SDN list because of its ties to the Islamic Republic of Iran Shipping Lines (IRISL), which provides logistical services to Iran's Ministry of Defense and Armed Forces Logistics (MODAFL). Nefertiti Shipping is IRISL's agent in Egypt, Treasury said.

It also added Faylaca Petroleum and several associated executives for making payments on behalf of Iran's National Iranian Oil Company (NIOC). "Faylaca Petroleum and other Sima General Trading-associated front companies, known to have worked with Iran to market crude oil and petroleum products, have also collaborated to obscure the origin of Iranian gas condensate," it added.

Lissome Marine Services LLC was hit because its vessels provide support to National Iranian Tanker Company (NITC), Iran's primary shipper of crude oil, "by facilitating ship-to-ship transfers," the department said. Six Lissome vessels also were cited. Asia Bank (formerly Chemeximbank), an Iranian-owned bank, was added to the SDN list because it supports the Central Bank of Iran and other Iranian banks. OFAC also added five more Iranian banks to the list also: Khavarmianeh Bank, Ghavamin Bank, Gharzolhasaneh Resalat Bank, Kish International Bank and Kafolatbank. The new sanctions also hit Meraj Air, which is an Iranian government airline "that has been used to ferry illicit cargo, including weapons, from Tehran to the Syrian regime since at least 2013," Treasury said. OFAC also added Caspian Air, an Iran-based airline that transports "personnel, and illicit material, including weapons, from Iran to Syria," it added. Two front companies for Mahan Air also were added to the SDN list: Turkey- based Pioneer Logistics and Thailand-based Asian Aviation Logistics.

Iran's attempt to evade sanctions by changing the names of entites also drew sanctions. Treasury named Pouya Air, which it said is an alias for Iran's Yas Air, which was designated in March 2012. "In late 2012, Yas Air changed its name to Pouya Air, reflecting the third name change for this company since it began operations in 2000 as Qeshm Air. The first name change was to Pars Air in 2006 and later to Yas Air in 2008," it said.

Ashley Furniture Defends Plea for Share of Byrd Money

Whether or not a company is entitled to a share of money distributed under the Byrd Amendment should not be based on the mere checking of a box entitled "support," lawyers of Ashley Furniture and Ethan Allen argue in a reply brief filed in the Supreme Court. The two companies are seeking a share of funds distributed under the Continued Dumping and Subsidy Offset Act (CDSOA) even though they did not support the antidumping case against imports of bedroom furniture from China.

In their request to the high court for a writ of certiorari to review a circuit court ruling denying them a share, the firms claim Byrd violates their free speech rights by requiring them to support a certain position in a trade case.

The brief, submitted by lawyers at Mowry & Grimson and Goldstein & Russell July 29, replied to a Solicitor General brief opposing the petition. The response repeats many of the arguments made in the initial petition for why the Supreme Court should review the Court of Appeals for the Federal Circuit's (CAFC) rejection of Ashley's suit for a share of the Byrd money (see **WTTL**, July 21, page 1).

"Instead of asking whether a company wants to join the administrative proceedings as a party, the petition support question instead asks whether a company supports imposition of trade sanctions as a matter of policy," it stated.

"A company can honestly believe dumping is occurring, believe that it is injured, want relief if antidumping duties are imposed (including to avoid being disadvantaged vis-à-vis its domestic competitors), yet nonetheless honestly believe that on the whole imposing antidumping duties will do more harm than good. It may believe, for example, that imposing duties could trigger a wider trade war, and that trade negotiations would provide a better response. Or it may think that imposing sanctions on China would simply move production to other countries with low labor costs, like Vietnam," it argued.

The brief disputes the contention that the fight over Byrd money is moot because the law was repealed after the U.S. lost a case against it at the World Trade Organization. "The United States repeats its assurance from its opposition in *SKF* four years ago that the CDSOA is on the verge of becoming obsolete. But respondents do not deny that over $100 million is at stake in this case alone, and that the statute will continue to govern the distribution of millions of dollars for years to come," their brief asserts. In addition, the firms disagree with the arguments filed on behalf of the American Furniture Manufacturers Committee for Legal Trade (AFMC), which said the two firms should be disqualified because they import some of their furniture from China. "That is grossly misleading. Respondents fail to disclose that, as the ITC documented, more than half 'of the petitioning firms and all ten of the largest domestic producers of wooden bedroom furniture in 2002' had imported furniture from China," the brief stated.

"In truth, globalization has forced many companies to adopt a blended strategy, producing or importing some particularly labor-intensive furniture from abroad while focusing domestic production on more capital-intensive lines of products," the brief continued. "Whether that, or protectionist measures like antidumping duties, are the best response to the modern global competitive environment is a quintessential matter of political debate. This Court should not countenance Congress's distortion of that debate through the discriminatory distribution of federal funds," it said.

* * * Briefs * * *

EXPORT ENFORCEMENT: Former Army captain Justin Gage Jangraw of Rockford, Mich., pleaded guilty Aug. 28 in D.C. U.S. District Court to exporting defense articles without State license and unauthorized removal of classified documents. Jangraw operated online business "Sexyweapon.com" and on eBay, selling military-grade weapons parts and accessories.

TRADE FIGURES: U.S. merchandise exports in July jumped 4.3% from year ago to $138.6 billion, Commerce reported Sept. 4. Services exports increased 4.2% to monthly record of $59.4 billion from same month in 2013. Goods imports went up 4.15% from July 2014 to $198.8 billion, as services imports gained 3.5% to $39.8 billion.

EAR TAKE II: In Sept. 5 Federal Register BIS corrected EAR updates from NSG plenary meetings (see **WTTL**, Aug. 11, page 10). Corrections include: Mexico listing under Country Groups; omission of controls on certain radiation-hardened TV cameras and lenses; contact information; and "instructions concerning certain items newly controlled under ECCN 3A225," notice said.

MEDIATION: CIT Judge Gregory Carman granted motion Sept. 2 to refer classification dispute over glove imports to court-annexed mediation. Although government opposed motion filed by Tenacious Holdings, Inc., for referral, Carman agreed potential penalty of $50,000 was less than likely cost of litigation (slip op. 14-101). "Tenacious is correct that mediation is more likely to be successful given that the amount in dispute here is relatively low and the tariff provision at issue is no longer in effect and therefore resolution of this case is unlikely to impact future cases. Noting these practical factors does not suggest that the case is unimportant, merely that it may be amenable to early resolution," Carman wrote.

THERMAL PAPER: Information from whistleblower was sufficient for Commerce to determine that Papierfabrik August Koehler (Koehler) had not cooperated fully in administrative review of antidumping order on lightweight thermal paper from Germany and justified its use of adverse facts available in reaching determination, CIT Senior Judge Nicholas Tsoucalas ruled Sept. 3 (slip op. 14-102), denying Koehler's motion for judgment on agency record. Petitioner in case, Appleton Papers Inc., had provided whistleblower's information to department, including claim that Koehler had not correctly reported domestic paper sales. Koehler later conceded that some information it filed was incorrect. "Koehler's admissions provided Commerce with evidence of its failure to cooperate. Koehler concealed the German destination of certain sales by transshipping merchandise through intermediaries outside of Germany," Tsoucalas wrote. Koehler's cooperation after admission "does not alter the fact that Koehler concealed sales information from Commerce that was essential to calculating the dumping margin," he ruled.