

Voluntary Self Disclosures – Honesty is the Best Policy

In April, BIS [announced](#) a new policy with respect to the submission of voluntary self-disclosures (“VSDs”) of possible violations. According to the memo released by BIS: *When someone chooses to file a VSD, they get concrete benefits... In the past, we have consistently applied it as a mitigating factor when a VSD has been filed after a potential violation was uncovered. Going forward, we will also consistently apply this factor **as an aggravating factor** [emphasis added] when a significant possible violation has been uncovered by a party’s export compliance program but no VSD has been submitted.*

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This new policy changes the assessment of whether to file a VSD, particularly when the underlying violations would be viewed as “significant.” BIS is encouraging companies to submit one ‘overarching’ VSD submission vs. several for different matters.

We’ve heard about the Department of Commerce’s Bureau of Industry and Security’s (BIS) \$300 million-dollar civil penalty against Seagate Technology LLC related to selling hard disk drives to Huawei in violation of the Foreign Direct Product Rule (FDPR). In addition, Microsoft Corp. recently agreed to pay more than \$3 million in fines for allegedly violating U.S. sanctions on Russia and other countries for sales of software and services. Why the vast difference in dollar amount of the penalties? Easy – it’s called a voluntary self-disclosure (VSD). Microsoft filed a VSD with the U.S. Treasury Department and the Commerce Department over their apparent violations of U.S. sanctions and export-control rules. Seagate did not.

Microsoft sold software licenses and services from servers located in the U.S. and Ireland to restricted parties (i.e. Specially Designated Nationals (SDN), blocked persons, and other unauthorized end users) located in Cuba, Iran, Syria, Russia and the Crimea region of Ukraine. Apparently, their screening system was insufficient to identify these end users and also did not identify entities owned 50 percent or more by SDNs.

They did the right thing and submitted a voluntary self-disclosure. OFAC considered their mitigating factors including improving their screening system, improving their processes for reconciling any potential screening matches, training and auditing.

Seagate, on the other hand, announced it would continue to do business with Huawei as its ‘strategic supplier’. Seagate exported and reexported from abroad, or transferred (in-country) over 1 billion dollars of hard drives to Entity-Listed Huawei companies. Seagate argued that they were not subject to the US Export Administration Regulations because their products were manufactured abroad. BIS stated that Seagate incorrectly interpreted the FDPR to require evaluation of only the last stage of its manufacturing process rather than the entire process.

The moral of the story is to file a VSD if your company has known violations in a timely and comprehensive manner. This will vastly reduce any penalties. If found to be non-egregious, the base penalty amount is one-half of the transaction value and capped at a maximum base penalty amount of \$125,000 per violation. Often, penalties could be suspended altogether. Also to boost your export compliance program and training.

Hopefully we’ve shed some light on this topic. Let BPE Global know if we can help you with any of your trade compliance needs. BPE Global is a global trade consulting and training firm. Julie Gibbs is a Director of BPE Global. You can reach Julie by email at julie@bpeglobal.com or by phone at 1-415-595-8543.