



On May 22, 2024, the Department of Justice ("DOJ") made a groundbreaking [announcement](#) that it declined prosecution of a biochemical company based on the company's prompt voluntary self-disclosure of an employee's export control violation and the company's "exceptional" cooperation with DOJ's National Security Division ("NSD"), the DOJ subcomponent responsible for investigating and prosecuting economic sanctions and export control violations (among other national security-related matters).

This is the first declination the NSD has announced since issuing its [new corporate enforcement policy](#) ("NSD Enforcement Policy") in March 2024. As discussed in our [prior articles](#), DOJ announced a shift last year toward prioritizing investigation and enforcement against corporations for economic sanctions and export control violations, with Deputy Attorney General Lisa Monaco famously announcing that "sanctions are the new FCPA"

and declaring that corporate enforcement in these areas is now a top DOJ priority. This declination provides valuable insight into how the NSD will handle corporate enforcement of these matters and, importantly, signals a willingness to give meaningful credit to companies that self-disclose and cooperate in the investigation of violations in this area.

DOJ announced the declination together with the guilty pleas of Pen Yu, also known as Ben Yu, and Gregory Muñoz to wire fraud conspiracy charges arising from their scheme to procure discounted products from the biochemical company, Sigma-Aldrich Inc. (doing business as MilliporeSigma), and unlawfully exporting them to China. DOJ recounted that, beginning in at least July 2016 and continuing through at least May 2023, Muñoz, a MilliporeSigma employee, helped Yu order biochemical products from MilliporeSigma by falsely representing to MilliporeSigma that Yu was affiliated with a biology research lab at a Florida university. Yu's fictitious affiliation led MilliporeSigma to provide Yu with over \$4.9 million in product discounts and other benefits. Yu paid Muñoz thousands of dollars in gift cards for facilitating these fraudulent discounted orders. Yu then repackaged the MilliporeSigma products and shipped them to China using false export documents that misrepresented the value and contents of the shipments.

After MilliporeSigma compliance personnel discovered the scheme, MilliporeSigma made the early decision to retain outside counsel, thoroughly investigate and voluntarily self-disclose the misconduct to DOJ, and to subsequently cooperate with DOJ in its prosecution and conviction of the responsible individuals. According to the DOJ announcement, MilliporeSigma's timely disclosure and ensuing cooperation also helped disrupt the illegal export scheme and facilitated the seizure of unlawful outbound shipments to China, thus preventing further violations.

### **DOJ National Security Division Enforcement Policy for Voluntary Self-Disclosures**

DOJ declined to prosecute MilliporeSigma—despite Muñoz's criminal wrongdoing—after considering the factors set forth in DOJ's Principles of Federal Prosecution of Business Organizations and the NSD Enforcement Policy. The NSD Enforcement Policy creates a presumption that businesses that:

- (1) **voluntarily self-disclose** to NSD potentially criminal violations arising out of or relating to the enforcement of export control or sanctions laws,
- (2) **fully cooperate**, and
- (3) **timely and appropriately remediate**

will generally receive a non-prosecution agreement, unless aggravating factors are present.

As we [previously reported](#), DOJ has signaled that it will prioritize enforcing sanctions and export control violations against corporations, making this declination to prosecute all the more noteworthy. In no uncertain terms, Deputy Attorney General Lisa Monaco characterized MilliporeSigma's cooperation as "exceptional." DAG Monaco noted that MilliporeSigma is the "first-ever corporate declination under [DOJ NSD's] voluntary self-disclosure program" and that "when a business uncovers criminal wrongdoing within its ranks, the company is far better off reporting the violation than waiting for [DOJ] to discover it." These statements send a clear message encouraging businesses to voluntarily self-disclose and cooperate with DOJ.

DOJ's announcement reinforces the importance of investing in compliance infrastructure around issues of national security concern such as export control and economic sanctions issues (which may previously not have received the same attention as other areas of criminal risk, such as anti-corruption). With this action, DOJ intends to send a clear message to the market that companies in a position to identify, thoroughly investigate and promptly report wrongdoing implicating U.S. national security threats may reap significant and material rewards,

including avoiding prosecution and heavy penalties.

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