



Miller & Chevalier

How to Succeed in an International Enforcement Climate

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In-House Panelists

- Phyllis Nordstrom: Chief Risk and Compliance Officer, MTS Systems Corporation
- Dawn Kimmich: Assistant General Counsel – Director Compliance, Delta Airlines
- Lynsey Barron: Investigations and Compliance Counsel, UPS

What Keeps You Up At Night

- Corruption risks
- U.S. sanctions risks (diversion, facilitation, screening)
- Export controls risks (diversion, classification, licensing, military and dual use goods, deemed exports, cross-border R&D collaboration)
- Risks imposed by other trade controls (customs, imports)
- Sales v. compliance generally
- Difficulties of knowledge and control in big companies
- Foreign subsidiaries, especially newly acquired
- Mergers and acquisitions



Best Practices For Guarding Against These Risks

- Risk assessments
- Internal Controls: policies, procedures, programs, enforcement, recordkeeping, contractual language, communication, oversight, monitoring
- Training
- Testing through audits and regular monitoring
- Management commitment



INTERNATIONAL ENFORCEMENT CHALLENGES



Identifying the Need for an Investigation

- Examples:

- Payments to government officials
- Sales with or dealing with SDN
- Exports without license that required license
- Miscalculating customs declaration prices
- Diversion of goods to forbidden countries
- Foreign subsidiaries dealing with SDNs or

forbidden countries

- Amount of exposure

- Guidelines
- Forfeiture
- Multiple Enforcers



- Likelihood of discovery?

- Reporting requirements
- Inquiries
- Arrests
- Whistleblowers
- Subpoenas
- M&A

When is Outside Counsel Needed?

- Interacting with regulators, DOJ
- Interacting with counsel for employees
- Compliance function at issue
- C-suite at issue
- Multi-jurisdictional challenges
- Scope and exposure
- Expertise
- Privilege issues, particularly internationally



The Voluntary Disclosure Decision

- Do you know enough?
- Race to the regulator?
- Skeletons?
- Building a compliance record?
- Size of exposure and value of leniency
- Criminal v. civil
- Risk of multiple jurisdictions becoming involved



Interacting with U.S. Enforcers

- Relationship-building
- Advocacy
- Credibility
- Buy-in
- Defensibility



Presenting Findings To Regulators

- Decision whether to present
- Maintaining credibility
- Advocacy
- Oral or written
- Privilege waiver concern
- Individuals
- Documents

MARKET-SPECIFIC RISKS



China

- Anti-corruption risks
- Military embargo and substantial dual use licensing
 - Export control risks in R&D collaboration
- Large number of “listed entities”
- Diversion risks
- North Korean content risks
- Sanctions and export screening challenges:
 - Language
 - Name similarities
 - Keeping up with lists
 - The Trade War
 - Deceptive practices



Iran

- Secondary sanctions risks
- U.S. person risks
- Getting it wrong: greatest source of enforcement, especially criminal cases
 - Export and re-export of U.S. origin goods to Iran (ZTE)
 - Use of U.S. financial system (Halbank/Atilla trial)
 - Dealing with SDNs
 - China-Iran pipeline for missiles and sensitive technology
 - Involving U.S. persons/goods/financial system in otherwise lawful business
 - Poor drafting of exclusion clauses (AIG)
 - Monitoring foreign subsidiaries' compliance, especially newly acquired (Black & Decker and Kollmorgen)
 - OFAC and SEC mandatory reporting requirements (Southern Cross Aviation)



Russia

- Continuing challenges created by Countering America's Adversaries Through Sanctions Act (CAATSA)
- Oligarchs and SDNs
- Sectoral sanctions
- Due diligence/compliance challenges



Venezuela

- New sanctions risk
- Dealings with Venezuelan government
- National oil company (PdVSA)
- Debt and equity
- Changing daily
- Numerous exceptions (General Licenses)



Hot Topics for Cross-Border Investigations Involving Global Businesses

- Multi-national regulator cooperation (appears to be on the rise)
- Attorney-client privilege issues (U.K. developments)
- DPAs (France also now using)
- Supply chain issues (ELF)
- Diversion issues for U.S. exporters (ZTE and Huawei)
- Customs and import issues arising from Trade War
- Data privacy and security issues

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