

Robinson+Cole

MLG Roundtable Discussion

RECENT TRENDS IN INTERNATIONAL TRADE
COMPLIANCE

JUNE 2, 2017



Please Note

This roundtable is designed to provide accurate information about the subject matter. However, it only provides general information and does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, let us know directly.

Preliminary Considerations

- This platform should not be used for activities prohibited by antitrust law.
- Avoid discussions leading to a restriction, or coordination, of competition between or among attendees.
- Attendees should not share information, have discussions, and/or make arrangements on, among other things, pricing, market conduct, terms of sale, individual manufacturing costs and costs of sale, output, or supplier or customer relations/allocation.

Introductions and Agenda

SPEAKERS:

- Joanne Rapuano
- Ted McHugh

AGENDA:

- Overview of export – two primary control regulations
- Review of some recent violations/investigations that have been in the news
- Examples of further evidence for the value in having robust company compliance plans

Export Compliance – Background

- The U.S. government enforces compliance with laws and regulations governing export of goods, technology, and services from U.S.
- Relevant Laws:
 - Primary Regimes: Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR)
 - Office of Foreign Assets and Control (OFAC)
 - Foreign Corrupt Practices Act (FCPA)

Enforcement Example – ZTE

- Enforcement example – ZTE Corp.
 - ZTE Corp. is a Chinese telecommunications equipment maker.
 - It was shipping U.S. telecommunications equipment to Iran.
 - Iran is on the U.S. government’s embargo list.
 - The Department of Commerce investigated and determined that the shipments violated U.S. laws and regulations.
- “ZTE engaged in an elaborate scheme to acquire U.S. origin items, send the items to Iran, and mask its involvement in those exports.”
 - U.S. Attorney General Jefferson Sessions
March 7, 2017

Enforcement Example – ZTE

- Enforcement example – ZTE Corp.
 - Earlier this year, the Department of Commerce announced a settlement with ZTE that included:
 - Approximately \$900 million fine
 - Compliance and ethics program with corporate monitor
 - Corporate guilty plea to criminal charges
 - Seven-year probationary period with potential for additional fines or revocation of export privileges if there are further violations
 - Department of Commerce will recommend that ZTE retain its export privileges during the probationary period.
 - Strong statements from secretary of Commerce and attorney general may signal tougher enforcement posture in new administration.

Huawei – working with ZTE??

- One of the world's biggest sellers of smartphones and the back-end equipment that makes cellular networks
- Received an administrative subpoena (12/2016) from the U.S. Treasury Department's Office of Foreign Assets Control (OFAC)
- Following the Department of Commerce's subpoena (sent summer of 2016) asking for the company to describe technology and services provided to Cuba, Iran, Sudan, and Syria over the past five years

Huawei – working with ZTE??

- Currently, Huawei has not been accused of any wrongdoing, and the subpoenas do not indicate that the company is part of any criminal investigations.
- Not long ago the Chinese company ZTE agreed to pay \$1.2 billion after pleading guilty to shipping U.S.-origin items to Iran.
- That investigation released documents that showed ZTE executives mapping out plans to work around, or break, U.S. export control regulations.
- Further investigation found that **ZTE learned about the plan from a company labeled as F7, which closely mimics Huawei.**

Enforcement Example – Arc Electronics

- On February 27, 2017, a former director of the now-defunct Arc Electronics was sentenced in New York federal court to more than 11 years in prison for his role in a conspiracy to covertly export more than \$50 million worth of sensitive and regulated microelectronics to Russia for use by its military and intelligence agencies.
- The founder/CEO pled guilty in September 2016 for his role – 10 years.

Enforcement Example – Did He Say “Bananas”?

- Since 2011, Fuyi Sun (Sun), a citizen of the People’s Republic of China, attempted to acquire extremely high-grade carbon fiber, including Toray type M60JB-3000-50B carbon fiber, which has applications in aerospace technologies, unmanned aerial vehicles (commonly known as drones), and other government defense applications.
- He contacted what he believed was a distributor of carbon fiber, an undercover entity created by HSI and “staffed” by undercover special agents of U.S. Immigration and Customs Enforcement’s Homeland Security Investigations (ICE-HSI) (UC Company), purchasing the M60 Carbon Fiber without the required licenses.

Enforcement Example – Did He Say “Bananas”?

- Sun instructed the undercover agents to:
 - use the term “banana” instead of “carbon fiber” in their communications (inquired about purchasing 450 kilograms of “banana” for more than \$62,000)
 - remove the identifying barcodes for the M60 Carbon Fiber prior to transshipment
 - identify the M60 Carbon Fiber as “acrylic fiber” in customs documents
- On April 21, 2017, Sun plead guilty to violating the International Emergency Economic Powers Act (IEEPA) in connection with a scheme to illegally export to China, without a license, high-grade carbon fiber, used primarily in aerospace and military applications.

Enforcement Example – Did He Say “Bananas”?

- He admitted in court that he “tried to skirt U.S. export laws by hiding his purchase of high-grade carbon fiber for the Chinese military...used fraudulent documents and code words (“Bananas”) in efforts to obtain this highly protected material, which is used in aerospace and defense programs”.
- The maximum sentence is 20 years in prison, which Congress will prescribe. Sun will be sentenced on July 26, 2017.

Enforcement Example – Access USA Shipping, LLC (Access) of Sarasota, Florida

- From April 2011 to February 2013, Access concealed that foreign customers were purchasing products through Access without their U.S. merchants knowing who the end users were.
- Access misdescribed, undervalued, destroyed, and/or altered export control documents to conceal the illegal exports.
- Access exported (or attempted to) controlled items without a BIS export license, along with a company on the Entity List.
- The company is ordered to pay \$10 million and the other \$17 million will be suspended for two years and waived if it does not commit any violations during the two-year probationary period.

What Does It All Mean? Takeaways...

Besides the obvious...

- Establish company buy-in and be “all in” to compliance – top down messaging
- Know your customer – screening
- Be alert to the transaction
- Have a plan - experiences with compliance plans
- Train your employees

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Environmental, Health and Safety Compliance

BOB MELVIN
MEGAN BARONI



Recent Topics

- Agency Budget and Funding
- Regulatory Rollbacks (e.g., Clean Power Plan, Waters of the United States)
- Regulatory Restructuring (e.g., 2:1 Regulatory Reform and Other Executive Actions, Superfund)
- Increasing Industry Requests for Regulatory Rollbacks (e.g., Superfund, RCRA Corrective Action)
- Other Avenues for Enforcement
 - States (subject to resources)
 - Citizen science and “Next Generation” uses of technology
 - Environmental groups (e.g., citizen suits and campaigns)

Thank you!

Q&A