

Key Strategies and Considerations for Doing Business in the Americas

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Key Strategies and Considerations for Doing Business in the Americas

Welcome

**Thursday, June 23, 2011
8:30 a.m.**

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Your Panelists

- **Ivonne Mena King**, Partner, Government Enforcement, Compliance & White Collar Defense Practice
- **Jaime B. Guerrero**, Partner, Government Enforcement, Compliance & White Collar Defense Practice
- **Gregory Husisian**, Of Counsel, Government Enforcement, Compliance & White Collar Defense Practice
- **Victor Manuel Rocha**, former U.S. ambassador to Bolivia and member, Government & Public Policy Practice
- **Roy J. Barquet**, Partner and Chair, Immigration, Nationality, & Consular Law Services Practice
- **Robert Iseman**, Associate, Business Litigation & Dispute Resolution Practice
- Moderated by **Francisco J. Cerezo**, Partner and Chair, Latin America Practice

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Compliance With the U.S. Foreign Corrupt Practices Act (FCPA)

**Ivonne Mena King ■ Jaime B. Guerrero
Robert Iseman**

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Foreign Corrupt Practices Act

- The Foreign Corrupt Practices Act:
 - Prohibits paying, offering, authorizing, or promising a bribe to a foreign government official in order to obtain or retain business
 - Requires publically traded companies to maintain accurate accounting records
 - Requires publically traded companies to have effective internal controls to prevent and detect FCPA violations

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Anti-bribery Provisions

- FCPA anti-bribery provisions are violated when:
 1. a covered person or entity
 2. corruptly
 3. offers, pays, promises to pay, or authorizes the payment of anything of value
 4. to a foreign government official
 5. to influence any act or decision of the foreign official in his official capacity, or to secure any improper advantage
 6. to obtain or retain business

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Books & Records Provisions

- Maintain accurate records
- Record transactions
- Ensure that receipts and expenditures are authorized by management and directors
- Prevent or detect unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements

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Jurisdiction

- DOJ and SEC have taken an expansive view of jurisdiction under the FCPA
- Parties subject to the FCPA include:
 - Domestic concerns and U.S. persons
 - Including U.S. subsidiaries of foreign corporations
 - Issuers
 - Officers, directors, employees, or agents of an Issuer or domestic concern
 - Any person that violates the FCPA within the territory of the United States

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Jurisdiction Based on Acts Committed on U.S. Soil

- Based on illegal acts that take place on U.S. soil
 - Relevant parts of conspiracy take place on U.S. soil
 - SHOT Show
- Based on making payments to foreign officials that make use of U.S. financial institutions or mails
 - Make use of U.S. banks or wire transfers
 - Panalpina
 - Halliburton/KBR

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Jurisdiction

- Panalpina World Transport Ltd. (“Panalpina”)
 - Swiss freight forwarding and logistics firm
 - Engaged in a scheme to pay bribes to numerous foreign officials on behalf of customers in the oil and gas industry in order to circumvent local rules and regulations regarding the import of goods
 - Over a five year period, paid over \$27 million in bribes to customs officials
- Penalties
 - Agreed to pay \$70 million criminal penalty
 - Agreed to pay \$11.3 million in disgorgement and prejudgment interest

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Foreign Government Official

“Foreign Official”

- DOJ and SEC have taken an expansive view regarding the definition of “foreign” government officials
- Covers a broad range of persons - from an elected official to an employee of any government controlled entity and agents acting on behalf of a government entity

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Foreign Government Official

- Government definition of “foreign government official” has recently been challenged in court
- Courts have upheld the government’s expansive definition
 - Lindsey Manufacturing
 - Carson (Control Components, Inc.)
 - Haiti Telco
- Beware employees of state-owned enterprises
 - Government views employees of state-owned enterprises as government officials
 - State-owned enterprises are increasingly common in China, Russia, India, Brazil, Mexico, etc.

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Fines and Enforcement

- DOJ officials have stated that prosecuting corruption is a top priority, second only to fighting terrorism
- In 2010 alone, U.S. enforcement agencies brought a combined 74 FCPA enforcement actions and assessed monetary penalties against corporations totaling \$1.8 billion

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Fines and Enforcement

- U.S. enforcement agencies have also shown an increased willingness to prosecute individuals
- In 2010, over 50 individuals were indicted, tried, or sentenced in FCPA related actions
- Penalties included:
 - Monetary fines of between \$1,000 and nearly \$2 million, and
 - Prison sentences ranging between probation and 57 months in prison

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Fines and Enforcement

- Non-U.S. Companies should be concerned regarding FCPA enforcement
- Since 2007, nearly half of all corporate FCPA resolutions have involved foreign companies
- Since 2007, foreign companies have paid more than half of all FCPA related fines and penalties
 - Daimler AG
 - Siemens AG

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Fines and Enforcement

- Siemens AG (German Company)
 - Violated criminal and civil internal controls and books and records provisions and civil anti-bribery provisions
 - Employees paid 4,200 bribes totaling more than \$1 billion to government officials to win lucrative infrastructure contracts
 - Payments purported to business consultants, off-shore bank accounts, “cash desks,” vacations, etc.
 - Penalties
 - Parallel corruption charges by German authorities \$815 million
 - \$450 million criminal fine to DOJ
 - \$330 million in civil disgorgement paid to SEC
 - Approximately \$50 million to Nigerian government
 - Totaling \$1.6 billion

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FCPA Enforcement Actions

- Nature's Sunshine Products Inc. ("NSP")
 - NSP, through an intermediary, made cash payments to customs officials in Brazil to allow products to be imported
 - NSP falsified its books and records to hide the true nature of the payments
 - SEC settled action with NSP and its CEO and CFO for \$600,000 from NSP and \$25,000 each from the officers
 - CEO and CFO were not alleged to have been aware of the corrupt payments but held liable by SEC due to their positions in the company and alleged lack of supervision (Control Person Liability)

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FCPA Enforcement Actions

- Latin Node, Inc.
 - Miami based company doing business in Honduras
 - Paid approximately \$1.1 million to employees of a state-owned telecommunications company in Honduras in order to use the company's telecommunications lines
 - Payments were made through a local consultant
 - Penalty
 - Agreed to pay \$2 million criminal fine

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Best Practices

- In light of ever increasing government enforcement, companies need to implement and monitor anti-corruption compliance programs
- Anti-corruption compliance programs can mitigate exposure
- Effective compliance programs can also act as a defense under the UK Bribery Act and as a mitigating factor for purposes of sentencing under the U.S. sentencing guidelines

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FCPA Anti-Bribery Compliance Programs

- Policies and Procedures – clearly articulated
- Financial and Accounting procedures – system of internal controls
- Senior responsibility – responsible for implementation and oversight process for reporting
- Training and communications – to directors, employees and third parties
- Reporting System – effective
- Auditing and monitoring
- Disciplinary Procedures
- Due Diligence
- Contractual Language
- Mergers/acquisitions

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Import and Export: Restrictions on Trade With Cuba and Other Sanctioned Countries

Gregory Husisian

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Export Controls and Sanctions at the Crossroads

- Right now, export controls are at a crossroads
- Since 9/11, the trend has been one of taking the existing system and tightening it
 - Increasing enforcement
 - Increasing focus on sanctioned entities
 - Increasing use of end-user controls
 - 25-fold increase in penalties
 - Welcome to the era of \$100 million-plus penalties

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Export Controls and Sanctions at the Crossroads

- Increasing methods of tracking down violations
 - Automated Export System
 - Coordination among agencies
 - Coordination among countries
- But – signs of loosening
 - Gates Proposal – Higher walls around fewer items
 - Key mention in State of the Union Address
 - Proposals to up-end current system
 - Increasing use of targeted, instead of broad-based, sanctions
 - Loosening of sanctions restrictions (particularly for Cuba)

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Export Controls and Sanctions at the Crossroads

What does it all mean?

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Export Controls and Sanctions at the Crossroads

- Higher risks for all companies that are subject to U.S. jurisdiction
 - Multinational companies
 - Companies that export from the United States
 - Companies that deal with U.S.-origin goods, information, software, and technology
 - Multinational financial institutions

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Export Controls and Sanctions at the Crossroads

- Topics
 - Regulation of U.S. Exports and International Conduct for Central and South America
 - Top Export Controls and Sanctions Enforcement Trends
 - Economic Sanctions and Export Controls Compliance
 - A Note on Antidumping and Countervailing Duty Actions

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Overview: U.S. Regulation of Exports and International Conduct

Key Players:

- Dep't of Treasury: Office of Foreign Assets Control (OFAC)
- Dep't of Commerce: Bureau of Industry and Security (BIS)
- Dep't of Homeland Security: Customs and Border Protection (CBP)
- Regulations relating to terrorists and drug traffickers (multiple agencies)
- Department of Justice: Enforcement

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Overview: U.S. Regulation of Exports and International Conduct

- **Export Administration Regulations (EAR)**
 - Controls on dual-use goods and technology (items with a commercial and military utility) and purely commercial items
 - Department of Commerce, Bureau of Industry and Security (BIS)
 - Export Administration Act (EAA)
 - 15 CFR Parts 730-774
- **Foreign Assets Control Regulations**
 - U.S. economic embargoes (principally Cuba, Iran, and Sudan) and prohibitions on dealing with terrorists and drug traffickers
 - Department of the Treasury, Office of Foreign Assets Control (OFAC)
 - Various statutes and executive orders
 - 31 CFR Parts 500-597

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Export Controls

Why are there export controls?

- Export controls usually arise for one of three reasons:
 - The export has actual or potential military applications or economic protection issues
 - There are U.S. government concerns about the destination country, organization, or individual
 - There are U.S. government concerns about the declared or suspected end use or end user of the export

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Export Controls

■ Controls on items – U.S. regulations reach:

- All direct exports of products, technology, software, or services from the United States
- Any release of technology to foreign nationals in the United States or abroad
- Foreign manufactured products containing U.S.-origin raw materials, components, software, or technology
- Re-exports of U.S. items from any location – jurisdiction follows the items
- Re-export of foreign items that only passed through the United States

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Export Controls

■ What is an export?

- Any item sent from the United States to a foreign destination
- An “item” includes commodities (computers, servers, other equipment), software, technology (design drawings, technical specifications, technical assistance)
- Technology is “deemed” to be exported when provided to non-U.S. nationals within the United States
- How an item leaves the United States does not matter for export control purposes
 - Hand carry
 - Air/ocean
 - Electronic
 - In person
 - Viewing

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Export Controls

■ Who is a “U.S. person”?

- U.S. citizens and permanent resident aliens (green card holders)
- Corporate entities organized under U.S. law
- Branch offices of U.S. corporations
- Anyone located in the United States

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Export Controls: Deemed Exports

- Transfer of technology to foreign national within the United States “deemed” to be an export to the home country of the recipient.
 - Plant visits
 - Telephone discussion
 - Fax
 - Email
 - In person discussion
 - Training sessions
 - Intranet
 - Extranet
 - File sharing
 - Application to situations abroad of personal knowledge or technical experience acquired in the United States
- Allowing foreign nationals, wherever located, access to computer files containing U.S. technical data
- License required for “deemed export” if license required for export of technology to home country of foreign national

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Sanctions

- OFAC Sanctions
 - Prohibit transactions with countries, entities, and individuals subject to boycotts, trade sanctions, and embargoes based on U.S. foreign policy and national security goals
 - Target foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction
 - Prohibit transactions with “Specially Designated Nationals” and “Blocked Persons”

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Sanctions

- Covers great variety of transactions (exports, imports, contracts, financial transactions, etc.)
- Generally controls the actions of U.S. persons and U.S. goods
- Sanctions are different for each country – governed by different regulations

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Sanctions

- There is a presumption under sanction programs that all shipments of goods and provision of services to boycotted countries or persons in those countries violates U.S. law.
- U.S. persons generally are prohibited from direct or indirect involvement in, or facilitating, any transaction involving an embargoed country or with any OFAC-listed individual or entity.
- Generally, “U.S. persons” are prohibited from exporting goods, technology or services to an embargoed country, to the government of an embargoed country, or to an agent of that government.
- Imposition of blocking requirement for persons who come into contact of funds of sanctioned person or entity

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Sanctions

- Services include technical (product support), as well as financial (financing an export transaction or writing insurance):
 - Conducting surveys in boycotted country
 - Providing marketing, business, and editing services to persons in boycotted country
 - Creating new information at behest of persons in boycotted country
 - Engaging the services of persons in sanctioned country to develop new information
 - Working directly or indirectly with persons in boycotted country to import or export U.S. publication services, including editing services
- Facilitation of a transaction that would be prohibited if performed by a U.S. person is also prohibited.
- “Facilitation” includes changing operating procedures to allow embargoed country transactions (e.g., changing credit terms) and may also include providing business support IT functionality from U.S. servers (e.g., invoice, A/P, A/R generation).

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Sanctions

- Countries under comprehensive embargoes
 - Cuba
 - Iran
 - Sudan
 - Syria

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Sanctions

General Embargoes

- Cuba** Unilateral U.S. embargo includes product exports and re-exports, product imports (including foreign products with Cuban components or raw materials), financial services exports, financial transactions, and U.S. person involvement (includes dealing in property in which a Cuban entity has an interest); also includes all transactions with Cuban nationals, wherever located; reaches all controlled foreign subsidiaries of U.S. corporations.
- Iran** Unilateral U.S. embargo includes product exports, some product re-exports, product imports, financial services exports, financial transactions and U.S. person involvement; does not reach controlled foreign subsidiaries of U.S. corporations.
- Sudan** U.S. embargo includes product exports, some product re-exports, product imports, financial services exports, financial transactions and U.S. person involvement; does not reach controlled foreign subsidiaries of U.S. corporations. [Note: Pursuant to Executive Order 13412 of October 13, 2006, certain activities in certain areas of Sudan are exempt from the embargo.]
- Syria** Prohibition on export and re-export of most U.S.-origin products and technology; reaches U.S. items wherever located [administered by BIS under EAR, not by OFAC].

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Sanctions

- Countries under targeted/limited sanctions include:
 - Belarus
 - Burma (Myanmar)
 - Ivory Coast (Cote d'Ivoire)
 - Iraq
 - Liberia
 - Libya
 - North Korea
 - Zimbabwe

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Sanctions: Persons Affected

- For Cuba: U.S. organized corporations, including their foreign branches and their owned or controlled foreign subsidiaries
- For Iran, Sudan, Syria: U.S. organized corporations, including foreign branches but excluding separately incorporated foreign subsidiaries
- U.S. citizens and permanent residents (including "green card" holders)
- All persons physically located within the United States
- All persons, wherever located, trading with U.S. origin goods or technology

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Special Cuba considerations

- Generally bans all imports
- Generally bans all exports, with only limited exceptions, such as for U.S.-origin (not foreign) agricultural goods, medical devices, and communication equipment
- Covers transactions with both the Cuban government and Cuban nationals
- Covers all forms of transactions – even those contingent on lifting of the embargo
- Extends to subsidiaries of U.S. companies
- Exports and reexports often need to take into account EAR restrictions

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Special Cuba considerations

- Bans many forms of travel, but increasing number of exceptions
 - Case-by-case license for education travel, religious activities, humanitarian projects, freelance journalism, etc.
 - When traveling, can engage in transactions ordinarily incident to travel (hotels, etc.)
 - Subject to per diem limits
 - It is essential that travelers not exceed bounds of license granted – no side trips to set up business

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Sanctions: SDNs

OFAC's SDN List

- OFAC also maintains comprehensive sanctions programs targeted at:
 - Terrorists and terrorist organizations
 - Narcotics traffickers and narcotics kingpins
 - Entities engaged in activities relating to the proliferation of weapons of mass destructions
- Entities that are subject to such sanctions are identified on the List of Specially Designated Nationals and Blocked Persons (“SDN List”), which is frequently updated and expanded by OFAC

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Export Controls at the Crossroads

- Topics
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Trends in Enforcement

- Trend #1: Higher fines
 - The 2007 IEEPA Enhancement Act increased the maximum civil penalty to \$250,000 per violation (or twice the amount of the transaction, whichever is greater)
 - Agencies have interpreted this as increasing not only the maximum fine, but mandating increasing fines in general
 - In settlement negotiations, the sky is the limit
 - Eye-popping sanctions settlements (Credit Suisse; Lloyds) and ITAR (ITT) of \$100 million and upwards
 - Congressional support to increase fines yet again

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Trends in Enforcement

- Trend #2: Increasing use of criminal fines
 - Traditionally, U.S. government reserved criminal fines for most egregious conduct
 - The BIS trend is more criminal enforcement – BIS reported hundreds of criminal cases initiated since 2007, including 16 criminal convictions for EAR violations in 2007, 39 in 2008, and 40 for 2009
 - Again, FCPA is pointing the way – increasing use of criminal approach is likely
 - Potential focus of new rules on fewer controls with higher walls could increase the stakes

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Trends in Enforcement

- Trend #3: Increasing focus on individuals
 - General announced intent of U.S. government in enforcement actions to focus on role of individuals
 - Increased deterrent effect sought by holding people in positions to oversee conduct of corporation personally accountable
 - Getting away from companies performing a cost-benefit analysis regarding when it makes sense to undertake suspect transactions

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Trends in Enforcement

- Trend #4: Increasing focus on Iran and China
 - Almost half of current fines are occasioned by exports to China and Iran
 - With new Iranian sanctions legislation recently passed by Congress, and with China trade/outsourcing expected to continue, trend will only increase
 - Prospects for easing of Cuban sanctions?
 - Travel
 - Internet communications

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Trends in Enforcement

- **Trend #5 – An Integrated Approach to Enforcement**
 - Traditionally, the U.S. government viewed regulations regarding international conduct in a very compartmentalized fashion
 - There is increasing realization that the laws are linked, such as sanctions and export controls; sanctions and anti-money laundering; FCPA and anti-money laundering; and so forth
 - U.S. announcement that it will be looking at export control violations at financial institutions consistent with this

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Trends in Enforcement

- **Trend #6: Increased Cross-Border Cooperation**
 - Where there is consensus on controls, increasing cooperation with foreign governments with overlapping jurisdiction increasingly the norm
 - Despite disagreement on scope of certain U.S. sanctions, there is near-universal recognition that strong anti-money laundering regulations require cross-border coordination
 - Recognition that movement from CoCom to the Wassenaar Arrangement might have weakened controls, in a way that requires increased cooperation
 - Enactment of Regulation 428/2009 in the EU extends EU export controls to intra-EU transfers, brokering of controlled items, and transit, including criminal penalties, brings the EU closer to the U.S. approach

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Trends in Enforcement

- Trend #7 – Increased focus on end users
 - BIS enforcement increasingly is focused on end users
 - Focus on terrorism and non-proliferation naturally encourages focus on end users, since these entities can exist in any country
 - January of 2008 issuance of National Security Presidential Directive 55 called for export controls to be tailored more to end users than implemented in broad fashion (to entire export categories or countrywide)

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Trends in Enforcement

- Trend #8: Increasing focus on technology and information
 - Best shown by China, the largest source of licenses by BIS, where exports of information (deemed exports) now constitute more than 40% of all license applications
 - Announcements of U.S. government that focus will be more on information, software, and technology
 - Largest enforcement case to date (ITT) concerned export of information, not goods

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Trends in Enforcement

- Trend #9 – Increasing extraterritorial application
 - Increasing recognition that primary boycotts/embargoes are not effective except on a unilateral basis
 - New Iranian sanctions legislation places increased pressure on foreign affiliates
 - Increasing pressure on financial institutions in third countries to choose between U.S. financial system and sanctioned entities (Credit Suisse; Lloyds)

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Trends in Enforcement

- Trend #10: Simultaneous loosening of some restrictions and selective tightening of others
 - Iran v. Cuba
 - Encryption v. China controls
 - Greater recognition of the futility of restricting technology found worldwide

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Compliance Principles

- General Compliance Principles
 - Setting the Proper Tone
 - Establishing a Compliance Program
 - Setting a Proper Tone
 - Conducting Training

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Setting the Proper Tone

- Eight Core Values of an Ethical Organization
 - Perceiving that leadership cares about ethics and values as much as the bottom line
 - Feeling safe to deliver bad news
 - Feeling treated fairly
 - Feeling valued as an employee
 - Not feeling pressured to compromise values
 - Believing ethical behavior is rewarded
 - Believing unethical behavior is punished
 - Recognizing whether the enterprise has an employee, community, or self-interest focus

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Establishing a Compliance Program

- It all starts with education and creating a culture of compliance
- Proper risk management addresses both intentional violations (get-the-sale-at-any-cost mentality), unintentional ones (get-the-shipment-out-now violations), and negligent ones.
- Risk management should not be viewed as barrier to conducting business, but rather a means of effectuating business objectives and carrying out corporate policy of pursuing lawful sales.

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Establishing a Compliance Program

<p>Common Practice:</p> <ul style="list-style-type: none"> ■ Putting in place an off-the-shelf export compliance program ■ Program and training in English despite multinational operations ■ Viewing compliance as a necessary evil and an impediment to business ■ Setting up stand-alone export control compliance initiative. ■ Implementing a program and running on auto-pilot ■ Treating compliance as a distraction from job duties 	<p>Best Practice:</p> <ul style="list-style-type: none"> ■ Tailoring compliance to the firm's business and operating environments ■ Translating compliance materials into all relevant languages ■ Viewing compliance as part of corporate controls and as an essential risk-management tool ■ Unifying export compliance with other corporate programs ■ Regularly updating the program, learning from issues that arise ■ Incorporating compliance into performance reviews
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Establishing a Compliance Program

- Sentencing Guidelines encapsulate basic best practices
- They include four basic steps to an “effective” compliance program.
 - **Risk-Based Approach.** Use of a risk-based approach in which organizations “periodically assess the risk that criminal conduct will occur,” including the “nature and seriousness of such criminal conduct,” the “likelihood that certain criminal conduct may occur because of the nature of the organization’s business,” and the “prior history of the organization”
 - **High-Level Oversight.** Designation of “high-level personnel” who are to be “given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority” to whom they can report problems as they arise.
 - **Assessment.** “Periodical[] assess[ment of] the risk of criminal conduct” and “appropriate steps” to modify compliance programs in light of the revised risk profile of the organization.
 - **Reasonable Responses to Potential Violations.** Taking “reasonable steps to respond appropriately” to any detected criminal conduct, “including making any necessary modifications to the organization’s compliance and ethics program.”

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Establishing a Compliance Program

- The basic steps companies should follow:
 - Identify the risks based upon where the company does business and the specific industry in which it operates
 - Determine what controls are needed in light of the identified risks
 - Assess what resources are available to administer the compliance program
 - Determine how the company will implement the program

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Establishing a Compliance Program

- The basic steps companies should follow:
 - Determine how the company will monitor the program's implementation
 - Identify steps the company will need to allow the confidential reporting of problems
 - Identify what steps the company needs to take to ensure that it regularly updates the program.

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Conducting Training

- How to Conduct Training Effectively?
 - Basic Goals of training
 - Impart basic knowledge of regulatory regime
 - Red flag identification
 - Teaching when to seek expert help – NOT to create experts of every employee
 - Put regulatory regime into personal context for trainees

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Conducting Training

- How to Conduct Training Effectively?
 - Conduct of Training
 - Mix of written and oral training materials – different people learn differently
 - Reiterating that firm has a culture of compliance
 - Overview of regulatory regime in plain language
 - Emphasis on how issues likely to arise for audience
 - Involvement of business managers to provide real world examples and avoid implication that this is just something “imposed by the lawyers”

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Conducting Training

- How to Conduct Training Effectively?
 - Conduct of Training
 - Be concise
 - Tailor presentation to audience
 - Use real world examples
 - Use scenarios
 - Encourage a dialogue
 - Best practice: Allow people to ask questions while they are engaged
 - Also leave time for questions
 - Be alert for situations that will require follow up

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Export Controls and Sanctions Compliance

- If export non-controlled products, focus on OFAC issues
- If export dual-use controlled products (as most exporters do), include OFAC and BIS (EAR) issues
- If export products for military use, include OFAC, BIS, and DDTTC (ITAR) issues

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Export Controls and Sanctions Compliance

- Steps to Compliance
 - Conduct a risk assessment
 - Catalogue all controlled technologies and goods
 - Catalogue all risk points for deemed exports
 - Network access
 - Foreign employees
 - Foreign visitors
 - Involve the IT and the HR Departments
- Include foreign subsidiaries and branches
- Disseminate knowledge of red flags
- Don't overlook value of audits

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Export Controls and Sanctions Compliance

- Develop written policies and procedures: create culture of compliance
- Create routine systems that catch most errors; but with easily involved human intervention to avoid mechanical over-reliance on fallible systems
- Conduct periodic self-assessment of risk and audit results
- Adopt appropriate incentives and disincentives to encourage compliance by employees
- Establish internal mechanism for employees to communicate compliance concerns

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Export Controls and Sanctions Compliance

- Develop an internal Web Site
 - Description of the firm's compliance plan
 - Summaries of applicable laws
 - FAQs
 - Forms and Checklists
 - Links to EAR, ITAR, and OFAC
 - Name of compliance officer
 - Mechanism to report problems/ask questions

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Export Controls and Sanctions Compliance

- Deemed Export Issues
 - Global sourcing: ensure sourcing enterprise is aware of all applicable trade controls (ITAR, dual-use, and sanctions). Ensure processes in place to prevent transfers of technical data without appropriate authorizations.
 - Foreign national employees in the United States: If business has controlled technical data, coordinate with HR to identify all employees who are not either U.S. nationals or permanent resident aliens, ensure processes in place to prevent transfers of technical data within the U.S. without appropriate authorizations.
 - Implement foreign visitors control program.

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Export Controls and Sanctions Compliance

Key Elements: Setting up a Program That Will –

- Automatically screen exports to countries under embargo
- Ensure that you “know your customer” and are aware of discoverable re-exports and other attempts to circumvent U.S. embargoes
- Screen against Specially Designated Nationals and Blocked Persons, which can be in any country
- Include exports of products or technology from foreign subsidiaries
- Take into account that sanctions change regularly and need constant checking

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Export Controls and Sanctions Compliance

- Automatically identify related parties and customers, to ensure that the true end user is known and is allowable
- Quickly determine the allowable status of exports
- Allow ready differentiation between allowable and disallowed transactions with countries under embargo, based upon transaction at issue
- Regularly updates to reflect frequent changes in parameters of law
- Automatically screens against frequently changing list of controlled entities/Specially Designated Nationals, including known aliases and related parties, subsidiaries, etc.
- Ensure prompt follow-up on suspected violations, including automatic procedures to prevent shipment where potential violation is unearthed

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Antidumping and Countervailing Duty Actions

- Topics
 - Regulation of U.S. Exports and International Conduct for Central and South America
 - Top Export Controls and Sanctions Enforcement Trends
 - Economic Sanctions and Export Controls Compliance
 - A Note on Antidumping and Countervailing Duty Actions

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AD/CVD

- Antidumping are actions predicated on price discrimination – sales in U.S. market for less than in the home market, or a third-country market (or below a measure of cost in some circumstances)
- Countervailing duty actions are predicated on the receipt of certain types of subsidies
- They are a weapon for U.S. companies and a concern for companies importing from Latin and South America
- This was underscored by recent antidumping and countervailing galvanized steel wire from Mexico and bottom-mount refrigerators from Mexico
- These actions can drive imports entirely from the market, so are a terrible weapon that must be taken seriously

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Overview and Update on Immigration Law

Roy J. Barquet

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State of U.S. and Latin American Relations

Amb. Victor Manuel Rocha

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Q&A

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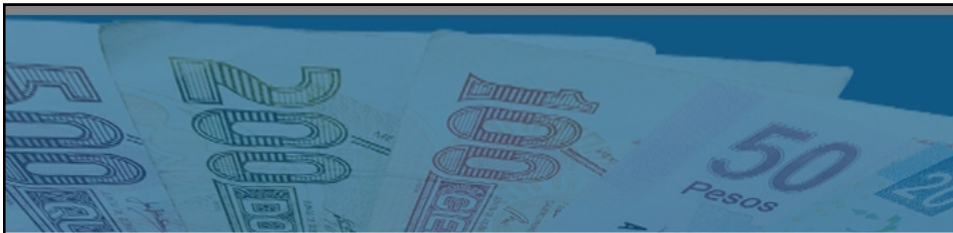


Thank You!

**Thank you for
joining us today!**

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**Key Strategies and Considerations
for Doing Business in the Americas**

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