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REDUCING THIRD-PARTY TRADE COMPLIANCE RISKS

The authors find that companies often overlook the risks posed by shortcomings in the trade compliance programs of their third-party business partners. In this article they describe two recent cases that illustrate such risks. They then suggest remedial steps in initial and follow-up due diligence, entering or renewing contracts, and responding to red flags.

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The U.S. government maintains a far-reaching set of trade controls regulations, including economic sanctions targeting a variety of countries, regions, and persons; export controls on military, dual-use, and commercial goods, software, and information; and rules penalizing compliance with boycotts not approved by the U.S. government. Over the last decade, the U.S. government has enforced these laws aggressively, undertaking a growing number of inter-agency civil or criminal investigations, with some resulting in eye-catching penalties of hundreds of millions or even billions of dollars.

In recent years, corporate legal and compliance departments have become increasingly sensitive to the risk of trade controls violations and increasingly committed to implementing comprehensive compliance programs. In our experience, companies' efforts to comply with U.S. trade controls focus primarily on their own compliance measures. For example, a company will classify its products before exporting them from the United States or a company will screen its customer, the ultimate end-user, and any relevant financial institutions against government lists of restricted parties.

In contrast, companies often treat risk posed by shortcomings in the trade controls compliance programs of distributors and other third-party business partners as an afterthought. They are likely to focus on the risks of dealing with such partners from an anti-corruption compliance perspective, but they may overlook the trade compliance implications of those same relationships.

RECENT CASES

Two recent sanctions cases demonstrate the potential consequences of taking a hands-off approach to managing the risks posed by these relationships, and underscore the need to focus attention on the compliance activities of distributors and other third-party business partners.

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