



ATCC 2025 FCPA Compliance for Global Exporters

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Global Anti-Corruption Laws

- U.S. Foreign Corrupt Practices Act (FCPA)
- UK Bribery Act of 2010
- France: Sapin II Act
- Canada: Corruption of Foreign Public Officials Act (CFPOA)
- Other EU countries (e.g., Germany, the Netherlands)
- South Korea
- Brazil
- China
- Australia



Overview of the FCPA



FCPA Basics



- The Foreign Corrupt Practices Act of 1977 (FCPA)
 - Prohibits US persons and companies from bribing foreign officials
 - Definition of foreign official is broad
 - Significant criminal and civil penalties
 - Captures any improper offer or giving of anything of value
 - ◆ Bribes, kickbacks, travel and other hospitality, loans, job offers for relatives, etc.
 - Improper advantage received goes beyond business contracts
 - ◆ E.g., regulatory relief (taxes, tariffs, duties, etc., confidential information)
 - Accounting and internal control violations for public companies
 - Broad jurisdictional reach

FCPA Anti-Bribery Provisions



- The anti-bribery provisions of the FCPA apply to:
 - Public companies (both U.S. and foreign) that are “issuers”
 - ◆ 15 U.S.C. §78dd-1

 - Domestic concerns (individual citizens or US residents, domestic businesses and legal entities)
 - ◆ 15 U.S.C. §78dd-2

 - Foreign companies and persons
 - ◆ Jurisdictional limitation: requires an act in furtherance of a corrupt payment while in the territory of the U.S.
 - ◆ 15 U.S.C. §78dd-3

The FCPA's Books and Records Provisions



- The Books and Records Provision:

- Issuers must keep books, records and accounts that accurately and fairly reflect transactions and dispositions of assets
- 15 U.S.C. §78m(b)(2)(A)

- The Internal Controls Provision:

- Issuers must devise and maintain a system of internal accounting controls over transactions, disposition of assets, and accounting
- 15 U.S.C. §78m(b)(2)(B)

- SEC can enforce these without any evidence of corrupt intent!

Third Parties and the FCPA

- Cannot do **indirectly** what you cannot do **directly**
- Corrupt payments through intermediaries are routinely prosecuted
- FCPA applies to conduct of third-party agents
 - Customs Brokers
 - Freight forwarders and logistics specialists
 - Boots-on-the-ground “fixers”
 - Lawyers
 - Joint Venture partners

Local Law Defense



- Some countries have laws requiring importer to pay for cost of inspection
 - Get local legal advice (in writing)
 - Get letter from relevant agency
 - Book fees clearly and transparently

Facilitation Payments

- Permissible under the FCPA
 - Other anti-corruption laws may prohibit
- Many companies do not permit them
- Review internal guidance
- Facilitation payments are very narrowly defined
 - Routine government action
 - Nondiscretionary acts
- Examples:
 - Processing and filing government papers, like visas
 - Loading and unloading cargo

Extortion or Duress



- Extortionate demands under imminent threat of physical harm
 - DOJ: No corrupt intent
- Should be reported immediately to Legal HQ
- Should be clearly documented and payments recorded
- Examine mitigating steps



FCPA Enforcement Against Exporters

Pressure on Exporters and Freight Forwarders

- Numerous interaction with customs officials during inspection and clearance of goods
- Tight delivery schedules
- Risk of spoilage, cost of storage
- Financial Risks to freight forwarders
 - Costs of protecting, storing and moving goods
 - Liability to customers
- Unclear local regulations and increased discretion of local officials generated by tariff uncertainty



Problematic Conduct



- Bribing customs and border officials to:
 - Secure required paperwork
 - Evade customs duties and other fees
 - Expedite movement of good and equipment into country
 - Evade permitting requirements
 - Move in prohibited goods
 - Facilitate release of equipment impounded by customs officials
 - Secure favorable outcomes on enforcement actions
 - Waive safety inspections

Enforcement Actions Involving Bribery of Customs Officials



- Panalpina World Transport (2010)
 - Global Freight Forwarder
 - DOJ accused it of bribing customs officials in Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan to import goods, materials, and oil services equipment on behalf of its customers
 - ◆ \$27 million in bribes to foreign officials over five years
 - Entered FCPA criminal resolution with DOJ
 - ◆ Criminal penalty of more than \$70 million
 - ◆ SEC disgorgement of more than \$11 million
 - ◆ Violations of the anti-bribery and books and records provisions of the FCPA
 - ◆ Three-year deferred prosecution agreement and compliance reporting to DOJ

Enforcement Actions Involving Bribery of Customs Officials

- Panalpina's customers also reached separate resolutions under the FCPA
 - SNEPCO (Royal Dutch Shell in Nigeria)
 - Noble Corporation
 - Transocean Ltd.
 - Tidewater Marine Inc.
 - Pride International
- All of these cases involved significant penalties and continuing compliance oversight



Enforcement Actions Involving Bribery of Customs Officials



FCPA Penalties Far Exceed Bribe Payments

Company	Bribes Paid	DOJ Criminal Penalty	SEC Disgorgement
GlobalSantaFe Corp.		\$2.1M	\$3.8M
Noble Corporation	\$74K	\$2.6 M	\$5.6M
Pride International	\$800K	\$32.6M	\$23.6M
Royal Dutch Shell	\$2M	\$30M	\$18.1M
Tidewater Inc.	\$1.6M	\$7.4M	\$8.1M
Transocean Inc.	\$90K	\$13.4M	\$7.2M

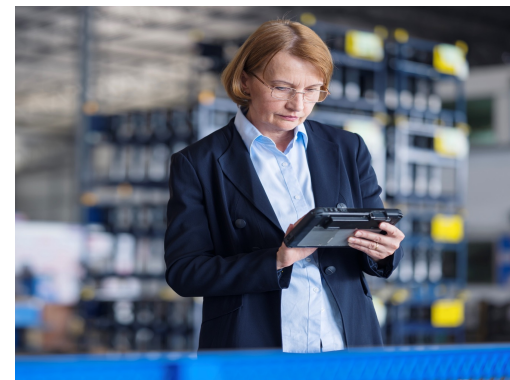
Enforcement Actions Involving Bribery of Customs Officials

- Ralph Lauren Corp. (2013)
 - Ralph Lauren's subsidiary in Argentina paid bribes through an agent to customs officials in Argentina to clear merchandise
 - ◆ Improperly secured paperwork to clear goods through customs
 - ◆ Improperly avoided necessary paperwork
 - ◆ Improperly sought to clear prohibited items
 - ◆ Improperly sought to avoid inspection
 - \$882,000 criminal penalty
 - \$734,000 in civil disgorgement
 - Two-year period of compliance reporting



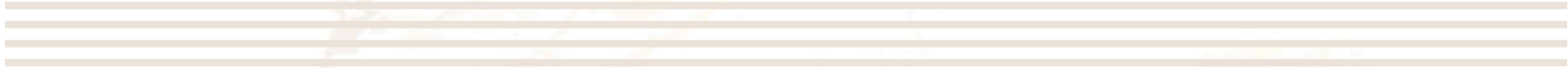
Enforcement Actions Involving Bribery of Customs Officials

- Zimmer Biomet Holdings Inc. (2017)
 - Florida-based subsidiary paid bribes to import non-compliance products into Mexico
 - ◆ Used a customs agent to evade Mexican regulatory requirements
 - ◆ Products were mislabeled
 - ◆ Products lacked proper country of origin markings
 - ◆ Products did not have valid registrations in Mexico
 - Scheme involved segregating non-compliant products and moving them separately after bribing customs officials
 - DOJ and SEC faulted Zimmer Biomet for a lack of adequate internal accounting controls that permitted unauthorized retention of sub-agents and lack of verification of invoices
 - DOJ criminal penalty of \$17.4 million
 - SEC civil penalty of \$6.5 M and disgorgement of \$6.5M





Managing Risk



Compliance – Managing the Risk



DD prior to onboarding



Periodic review



Contracts with specified payment terms tied to legitimate service deliverables



Invoices tied to services specified in contracts



Training



Monitoring

Onboarding Customs Agent

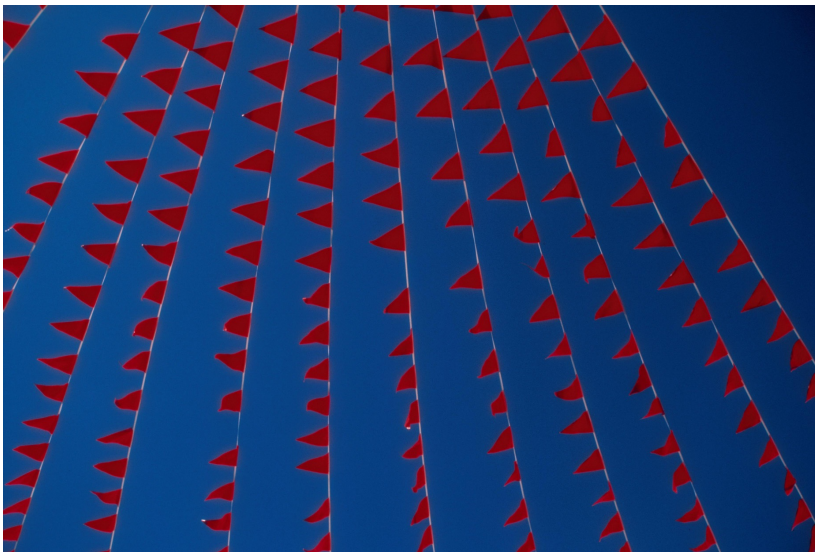
- Sanctions screening
- Reputational search
- Political or governmental affiliations?
- Experience
- Logistical capacity
- ABC Training
- Certification of compliance with company policies

Relevant Terms for Third Party Agreements



- Third party agreements must:
 - Specify nature of services to be performed
 - ◆ Frequency of services
 - ◆ Nature and volume of goods
 - ◆ Scope of duties
 - Clear payment terms tied to invoices
 - Commissions based on industry standard terms
 - Avoid success fees
 - Prohibit employment of PEPs on behalf of client
 - Prohibit unauthorized employment of sub-agent
 - Include anti-bribery clauses
 - Include audit rights

Red Flags



- Invoices with euphemistic references
- Invoices with falsified values for imported goods
- Fake invoices to generate bribery funds
- Overcharges, supplemental charges or one-time success fees
- High commission rates
- Local agent suggested by officials
- Demands for contributions to local municipalities, political parties, charities or labor organizations

Misleading Accounting Entries to Conceal Bribes



- Customs “intervention” payments
- Vendor payments
- Sales and marketing expenses
- Miscellaneous expenses
- One-time adjustment/sur-charge
- Special service charge or “professional services”
- “Loading and Delivery” expenses
- Special, unspecified “taxes”

Finance and Compliance Controls

- Finance staff provides critical control
 - Invoices should be tied to agreement
 - Staff should be trained to identify invoices with indicia of irregularities
 - Payments made to unrelated jurisdictions pose high risk

- Compliance should periodically review custom broker and agent relationships
 - Invoices should be pulled for periodic review
 - Screening using data analytics for payment anomalies
 - Periodic update due diligence on brokers and agents



Challenges for HQ Oversight

- Limited resources of local compliance officers
- Lack of HQ visibility into smaller third-party agents
- Numerous local law regulations governing imports
 - Insufficient in-house local law expertise, excessive reliance on customary practice
- Frequency of interactions with local officials
- Different risk environments



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Questions?