

Trade controls investigations & enforcement

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Agenda

- Disclosure Policy
- Lifecycle of an Investigation
- Practical Steps to Reduce Risk
- Enforcement Trends
- Criminal Matters
- Collateral Damage

Disclosure Policy

- Who is responsible for investigations and disclosures?
- Need to balance:
 - Confidentiality
 - Privilege
 - Ownership
- When to disclose?
- What to disclose?
- Formal, written investigations and disclosure policy

Lifecycle of an Investigation

- Managing an investigation from the initial allegation through disclosure and corrective actions
- The importance of transparency and reporting to senior management
- Tracking metrics and trends to identify risks

Practical Steps to Reduce Risk

- If you are dealing with a significant problem...
- Before making substantive statements to the government:
 - Conduct a full and detailed investigation
 - Engage both white collar defense counsel *and* trade compliance, government contracts, or other regulatory counsel
- Consider creative ways to short-circuit enforcement action
 - E.g., affirmative submissions to primary regulators

Enforcement Trends

- Jurisdiction and Classification
 - Meggitt
 - Intersil
 - Aeroflex

- Cases can turn on whether an item is of U.S. origin, in addition to ITAR vs. EAR

- Focus on culpable individuals

Criminal Matters

- DOJ vs. DDTTC and BIS
 - Inter-agency relationships can be complex
 - Agencies have different perspectives and priorities
 - E.g., different views on “rogue” employees

- Extended timeframes and costs

- Additional risks:
 - Procurement suspension and debarment
 - Imposition of compliance monitor
 - False statements

Collateral Damage

- Breach of financing agreements or other contracts with compliance clauses
 - May trigger notification requirements

- Business disruption

- Compliance strategy driven by investigation rather than broader view of company's needs:
 - Paralyzed compliance team
 - Unplanned company-wide risk assessment or investigation