Trade controls investigations & enforcement

Christine Lee and Peter Lichtenbaum
November 9, 2017
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
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. DDTC 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