



Buying Products Outside of the US: Key Considerations

National Association of Wholesaler-Distributors

Billion Dollar CLO Roundtable

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Buying Products Outside the U.S. Means:

- Standard vendor issues, but the vendor is outside the U.S.
- Enforcing your rights, potentially outside the U.S.
- Regulatory compliance
 - Customs
 - Foreign exchange and tax
 - Anti-bribery
 - Product standards/safety
 - IP
 - Export control (if providing designs and tooling)



Roadmap

- Who?
- What?
 - (When)?
 - (Where)?
- How?
- Dispute Resolution
- Damages



Who?

- Do You Know Your Supplier, Consultant, & Logistics Provider?
 - Due Diligence: Risk-Based Approach
 - Is due diligence necessary every time?
 - What are the challenges of conducting cross-border due diligence?
 - What are the best practices?
- Protecting the Wholesaler
 - Indemnification: Vendor holds Wholesaler harmless regarding harm (etc.) due to vendor's actions / inactions?
 - Should reps and warranties be customized?
 - What compliance issues do you want to push down?
 - Is your template appropriate?

What?

- What is the product?
 - What went into making the product?
 - What quality control do you have (in the contract and outside)?
 - What is the value of the product?
 - Reminder: consider taxes, duties, rebates, foreign exchange fees
 - Who bears the risks related to the product?
 - Delays
 - Damaged/defective goods
 - Warranties
 - Insurance
 - Transportation costs



How?

- Import & distribution process
- Compliance with anticorruption laws
 - Concern: Vendor, suppliers, purchasing agents (everyone in the chain) must conform with applicable anti-corruption laws
 - Foreign Corrupt Practices Act
 - International anti-corruption conventions
 - Local laws
- Compliance with customs regulations
 - Who is ensuring your compliance?
 - Where are your records?

The Reasons for Bribery



Source: KPMG

Dispute Resolution

- How do you enforce your contract?
 - What is your preferred choice of law and forum? Why?
 - Injunctions – have you tried enforcing an injunction abroad?
 - Litigation or arbitration?



Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.

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Damages

- What measure of damages is sufficient to mitigate risks? (Macro)
- Are the buckets of damages well-aligned to the risks that give rise to those damages? (Micro)
- Types of Damages
 - Actual Damages (Compensatory)
 - Direct Loss
 - Consequential Loss
 - Punitive Damages (Non-Compensatory)
- Legal Costs



Summary - Key Themes

- **What is the risk profile of the transaction?**
- **What are the interests that the company is trying to protect?**
- **How does buying products from outside the US complicate the risk profile and the company's interests?**



Questions?



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