

# **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:

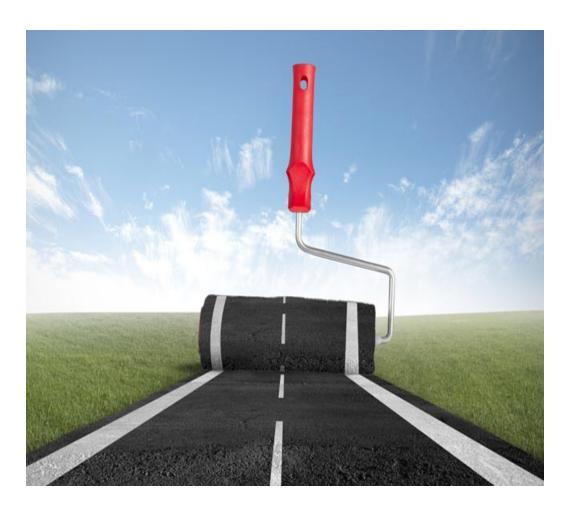
- Standard vendor issues, but the vendor is outside the U.S.
- Enforcing your rights, potentially outside the U.S.
- Regulatory compliance
  - Customs
  - Foreign exchange and tax
  - Anti-bribery
  - Product standards/safety
  - IP
  - Export control (if providing designs and tooling)





## 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?

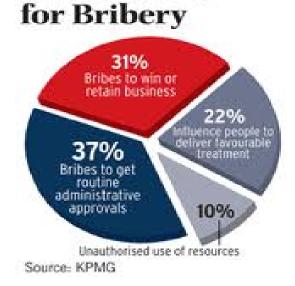
- What is the product?
  - What went into making the product?
  - What quality control do you have (in the contract and outside)?
  - What is the value of the product?
    - Reminder: consider taxes, duties, rebates, foreign exchange fees
  - Who bears the risks related to the product?
    - Delays
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

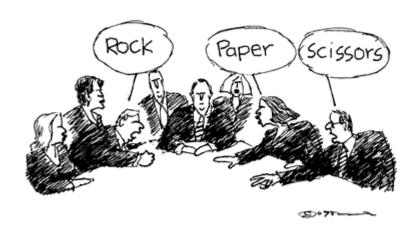


The Reasons



### 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?

Middle

How does buying products from outside the US complicate the risk profile and the company's

interests?



## Questions?





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