



STEPTOE OUTSIDE COUNSEL

US restricted party screening: launching a new program

You've just started a new trade controls job. You're experienced with logistics issues, but your new employer has a lean staff and assigned you restricted party screening along with your other roles. The company president has been following the news about US sanctions and export controls. He knows the company needs to do more for screening customers and vendors than what they have been doing, which isn't much. Your company makes a few products and has overseas sales and distributors selling those products and some services and third-party products. You sell mainly into Europe and Asia, with about 200 different unique customers and a few dozen added each year. How do you set up a screening program that's just right for your company's risk profile and operations?

You decide to turn to three trade compliance friends for advice.

Patty works at a big multinational manufacturer with a huge trade compliance department and worldwide sales. Her company screens many thousands of transactions every week through their automated restricted party screening program from an outside

vendor. All of that is tied into their sales management program so the screening happens automatically and sales cannot move forward without resolving any "hits" triggered by the automated

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restricted party screening program. A few employees are assigned to check any "hits" and run tricky ones past outside counsel. They also have extensive due diligence for significant new contracts. Patty checks every six months to make sure that they're screening the right lists and not getting too many false positives and have set up the right parameters for fuzzy language searching and due diligence. It sounds great, but it's very expensive, uses a lot of internal staff, and has more automated features than you need. You don't think you can get this type of program past the company president.

Martin's just the opposite. His

company is a new start-up and doesn't conduct any screening. You're surprised, but Martin says that they really aren't working with any outsiders at the moment. Their prototype isn't ready for sale yet and they're planning to sell mostly in the United States. There are no vendors to screen as their inputs are off-the-shelf electronics from big box stores. He's got his hands full with helping to set up the company, but he's not focused on trade compliance. That seems ok for them, but won't work for you.

Beth's company is more like yours. They have a few big customers who represent most of their sales and each year have a few dozen smaller customers. They sell just a few products and in a specialized industry. They have sales in a handful of countries, including China. Their compliance budget is small, and one of Beth's jobs is to screen each potential new customer at the time of the original onboarding and before each shipment. Beth uses the US consolidated restricted party screening tool that's available online – a manual process – and she also has a required annual end-user certificate. She also screens distributors and vendors through the manual process, and has export controls contract language and a certification required for the distributors. For new customers, she also does some online searching for the type of red flags the US Department of Commerce says to look for. Beth checks with outside counsel periodically when she has tricky issues or can't handle the screening during crunch times. Beth documents all screening processes and results. It's a lot of double-checking and recordkeeping, but she's confident that it's a good process and manageable given their number of sales. They've had a few "hits" over the years, so she's glad that she's tied into the logistics process so that shipments don't go out without her ok. She also lets distributors know anytime there is a "hit" so they know that products can't go to that customer.

Beth's approach sounds like one you could follow and that will address your risks. You put together a checklist, find the US consolidated screening tool through an online search, meet with shipping, sales, and supply chain departments to see how to fit in their existing processes, and then run it all by the president before implementing. It's just right for now, and you will consider updates as the company grows. ■

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