

**Minimize Export Risk
with Due Diligence**
Global Business Club of Mid-Michigan

**Minimize Risk with
Comprehensive Partner Contracts**

February 16, 2017

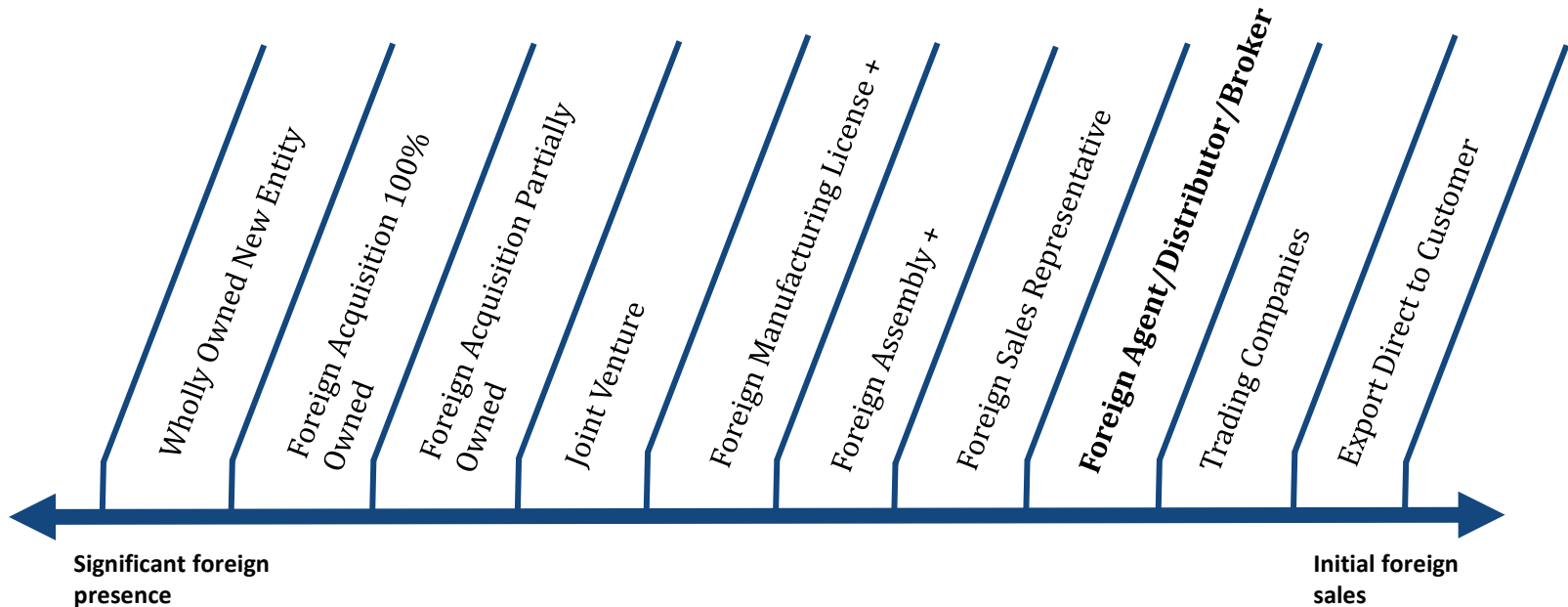
Jean G. Shtokal, Shareholder



Jean G. Schtokal

- Shareholder and International Trade Lawyer at Foster, Swift, Collins & Smith, P.C.
 - JSchtokal@fosterswift.com
- Over 20 years of practice in business and international law
- Appointed Chair of Michigan District Export Council-West by U.S. Secretary of Commerce
- Advisory Board of Michigan State University's Center for International Business Education and Research
- Co-Chair of the Global Business Club of Mid-Michigan
- Best Lawyer's in America (International Trade and Finance Law)
- Executive-in-Residence, Michigan State University – The Eli Broad College of Business, International Business Center
- *Michigan Lawyers Weekly Women in the Law 2013*

Legal Issues Arise all Along the International Trade Spectrum



Why are Comprehensive Contracts Essential when Conducting International Business?

They Reduce Risk

- Set forth obligations and responsibilities of each party.
- Avoid cultural misunderstand/language barrier.
- Force due diligence.
- Promote dispute resolution
- Add a layer of protection

How are international contracts different than domestic contracts?

- What is U.S. law?
- How foreign law comes into play.
- Resolving disputes.
- Have to deal with additional risks/layers of protection.

U.S. and Foreign Laws Affecting the Relationship

U.S. Laws: U.S. laws follow you and your products/services when you do business in a foreign country

Foreign Laws: When you do business in a foreign country, laws there may apply to you and your transactions.

- There will be some — do your homework with your international trade lawyer and local counsel

U.S. and Foreign Laws Affecting the Relationship (cont'd)

Examples – U.S. Laws affecting the Agent/Distributor Relationship

- U.S. Trade Embargoes and Sanctions
- U.S. Export Controls
- U.S. Foreign Corrupt Practices Act
- U.S. Antiboycott Laws
- Tax Laws

U.S. and Foreign Laws Affecting the Relationship (cont'd)

Examples – Foreign Laws affecting the Agent/Distributor Relationship

- Protections for local Agents/Distributors (for example, termination restrictions and mandatory payments)
- Import Laws
- Product Regulations/Licenses/Registrations
- Commercial Agent Registration Requirements
- Competition Laws
- Tax Laws

Examples of Resources for Foreign Laws in Foreign/Agent Distributor Contracts

- globalEDGE Trade Law Compendium – <https://globaledge.msu.edu/global-resources/trade-law-compendium>
- “Doing Business In” Guides (trade regulations, customs and standards) <http://export.gov/ccg>
 - Example – Doing Business in Mexico – <https://www.export.gov/article?series=a0pt0000000PAuRAAW&type=Country Commercial kav>

Top 5 Issues to Address in Foreign Distributor/Agent Contract to Reduce Risk

1. Clearly set forth obligations and responsibilities of each party.
2. Decide your long term goals and craft the terms of the relationship to support your long term goals.
3. Planning for changes in risk.
4. Forethought regarding an exit strategy and what happens on termination of the relationship.
5. Dispute resolution.

Why do Foreign Partner Relationships Fail

U.S. Company

Didn't know how to grow market

Didn't invest in business growth

Not ambitious enough

Distributor

Lack of support

Impossible expectations

Company politics

From: Harvard Business Review

What Does the Survey Mean?

- Wrong partner?
- Neither party invests enough?
- What's needed for success changes over time?

End Where we Started

1. Be the Selector, not the Selectee.
Select Distributors; don't let them select you.
2. Pick the Right Market.
Find the market; then find the distributor/agent.
3. Keep your mind on the Goals.
Decide your long term goals; build strong incentives for appropriate goals.
4. I always like a Good Ending.
Starting at the beginning, think of the ending.
5. Remember Goldilocks and "just right."
Give the distributor/agent a job they can handle – territory that fits, and save additional products and market segments for later.
6. Be smart.
Know the U.S. law and foreign law that will apply to the relationship.

10 Key Issues to Reduce Risk in International Contracts with Business Partners

Precursor — Ensure No Law Prohibits or Restricts the Intended Relationship

- OFAC
- CFIUS
- Import Laws
- U.S. Export Controls
- Antibribery Laws

1. Proper Classification/Description of Relationship
2. Scope (What is and is not included)
3. Intellectual Property Protection/Rights/Licenses
4. Compensation/Payment
5. Responsibilities and Obligations of Each Party

Top 10 Key Issues . . . Cont'd

6. Sales Terms and Conditions
7. Tax and Employment Law Issues
8. Term and Termination
9. Compliance with Applicable Laws
10. Choice of Law/Dispute Resolution

OFAC

ENFORCEMENT INFORMATION FOR SEPTEMBER 13, 2016

Information concerning the civil penalties process can be found in the Office of Foreign Assets Control (OFAC) regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent final civil penalties and enforcement information, can be found on OFAC's Web site at www.treasury.gov/ofac/enforcement.

ENTITIES – 31 CFR 501.805(d)(1)(i)

PanAmerican Seed Company Settles Potential Civil Liability for Alleged Violations of the Iranian Transactions and Sanctions Regulations: PanAmerican Seed Company (“PanAm Seed”), West Chicago, Illinois, a division of Ball Horticultural Company (“Ball Horticultural”), has agreed to pay \$4,320,000 to settle potential civil liability for alleged violations of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR).¹ Specifically, OFAC alleged that from on or about May 5, 2009 to on or about March 2, 2012, PanAm Seed violated § 560.204 of the ITSR by indirectly exporting seeds, primarily of flowers, to two Iranian distributors on 48 occasions (collectively referred to hereafter as the “Alleged Violations”).

OFAC determined that PanAm Seed did not voluntarily self-disclose the Alleged Violations to OFAC, and that the Alleged Violations constitute an egregious case. Both the statutory maximum and base penalty civil monetary penalty amounts for the Alleged Violations were \$12,000,000.

CFIUS

Smithfield Receives U.S. Approval for Biggest Chinese Takeover

Shruti Date Singh and Bradley Olson
September 06, 2013 7:37 PM



Smithfield Foods Inc., the world's largest hog and pork producer, said U.S. regulators will allow the company to be bought by China's Shuanghui International Holdings Ltd. in what would be the biggest Chinese purchase of a U.S. firm.

U.S. Export Controls

ALPHABETICAL INDEX TO THE COMMERCE CONTROL LIST

This index is not an exhaustive list of controlled items.

Supplement No. 4 to Part 774 – Commerce Control List Order of Review
identifies the steps to follow when reviewing the Commerce Control List.

Description	ECCN Citation
Ablative liners, thrust or combustion chambers	9A106.a, 9A619.c, .e
Abrin	1C351.d.1
Absolute reflectance measurement equipment	6B004.a
Absorbers of electromagnetic waves	1C001
Absorbers, hair type	1C001.a Note 1.a
Absorbers, non-planar & planar	1C001.a Note 1, b or c
Absorption columns	2B350.e
Accelerators (electro-magnetic radiation).....	3A101.b
Accelerometer axis align stations	7B003 or 7B101
Accelerometer test station.....	7B003 or 7B101
Accelerometers & components therefor	7A101
Accelerometers & accelerometer components.....	7A001
Acoustic beacons	6A001.a.1.b
Fertilizers containing ammonium nitrate	1C997

Anti-Bribery Laws Yara International

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Ex-Yara bosses sentenced to jail

July 7, 2015


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Norway's largest-ever case of corporate corruption reached a new climax on Tuesday when a judge in Oslo convicted the former chief executive officer of fertilizer firm Yara International and three members of his top management team on charges they'd paid bribes in order to do business in either Libya, India or both. All four men were sentenced to jail terms of at least two years.

Yara's founding and former CEO Thorleif Enger was handed the stiffest jail term of three years, half of the six years prosecutors had sought but still considered harsh by Norwegian standards. Enger's former legal director at Yara, Ken Wallace, was ordered jailed for two-and-a-half years while former executive vice presidents Daniel Clauw and Tor Holba were sentenced to two years each.

Enger retired from Yara in 2008 and both Wallace and Clauw had left the company by the time they were charged and later indicted in the huge bribery case. Holba was placed on leave pending the outcome of the four defendants' lengthy and complex trial in the Oslo City Court (*Oslo tingrett*) that ran for three months earlier this year.

All had pleaded not guilty to charges they'd gone along



Yara's founding and former CEO Thorleif Enger was sentenced the

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Q & A

Jean G. Schtokal
Foster, Swift, Collins & Smith, P.C.
313 South Washington Square
Lansing, Michigan 48933
(517) 371-8276
jschtokal@fosterswift.com

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Lansing

313 S. Washington Square
Lansing MI 48933
(517) 371-8100 • Fax (517) 371-8200

Holland

151 Central Avenue – Suite 260
Holland, MI 49423
(616) 796-2500 • Fax (616) 796-2520

Southfield

28411 Northwestern Highway - Suite 500
Southfield, MI 48034
(248) 539-9900 • Fax (248) 851-7504

Grand Rapids

1700 E. Beltline NE – Suite 200
Grand Rapids, MI 49525
(616) 726-2200 • Fax (616) 726-2299

Detroit

333 W. Fort Street, 11th Floor
Detroit, MI 48226
(248) 785-4725 • Fax (248) 785-4726

St. Joseph

728 Pleasant Street – Suite 204
St. Joseph, MI 49085
(269) 983-1400 • Fax (269) 983-1401