

# Protecting Your International Supply Chains and Sales Channels

April 23, 2009



Presented by:

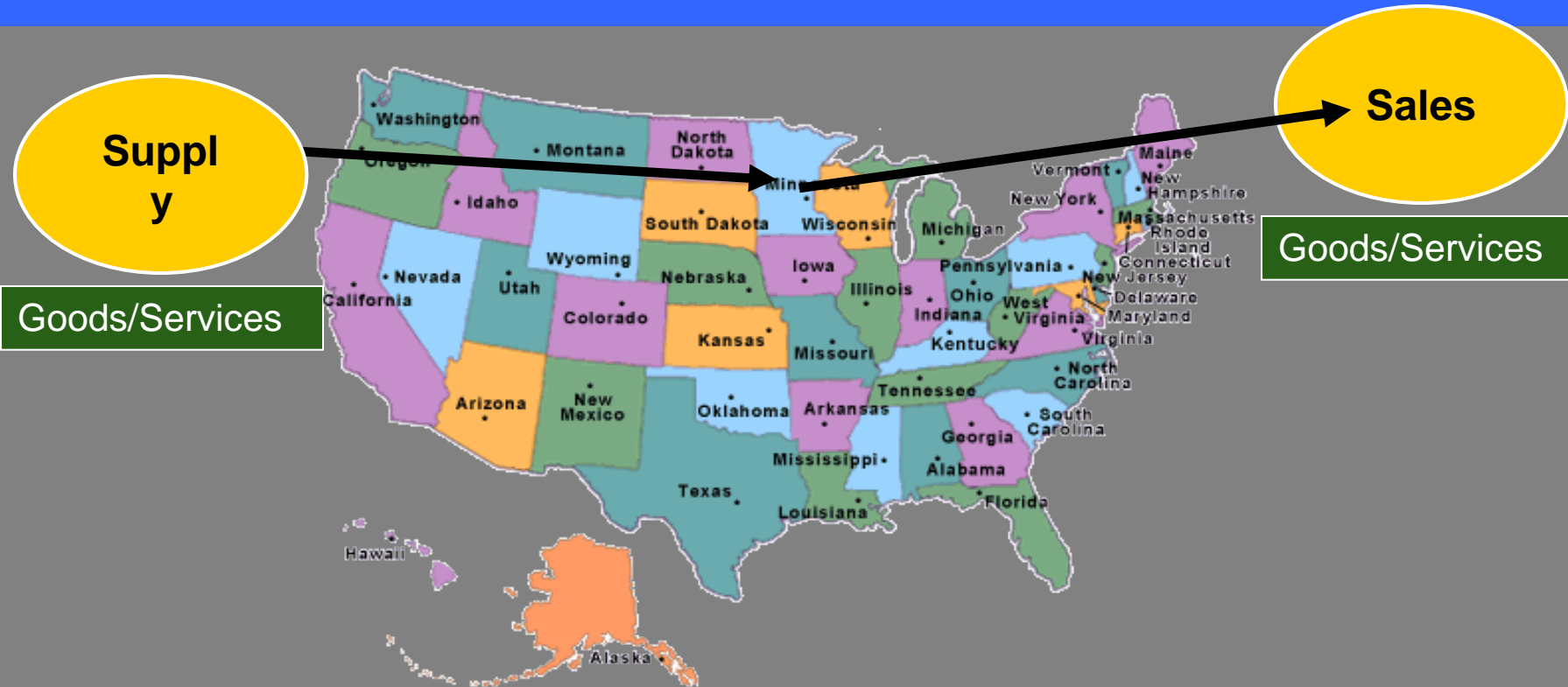
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# Agenda

- |                |  |
|----------------|--|
| 3:15-4:00 pm   | Key Issues and Best Practices for Protecting Your International Supply Chains and Sales Channels |
| 4:00-4:10 pm   | Break  |
| 4:10-4:40 pm   | Regional Issues and Challenges Impacting Your International Supply Chains and Sales Channels     |
| 4:40-5:30 pm   | International Supply Chain and Sales Channel Hypotheticals                                       |
| 5:30 – 6:30 pm | Networking Reception (Grand Hotel)   |
| 7:00 – 9:00 pm | Dinner at Mission American Kitchen   |

# International Supply Chains and Sales Channels



# Key Issues & Best Practices

- Provide an overview of the risks potentially impacting international supply chains and sales channels
- Identify best practices for assessing such risks
- Discuss mechanisms for addressing such risks

# Overview of Key Common Risks

## Supply Chains

- Reduction in quality or quantity of inputs or products – potential effect on reputation
- Loss of key suppliers to competitors/insolvency
- Discrepancies between invoices and contract prices
- Lapse in social accountability
- Political interference

## Sales Channels

- Financial weakness of distributors/customers (e.g., payment defaults)
- Loss of key customers/distributors to competitors/insolvency
- Lapse in legal compliance
- Political interference

# Supply Chain disruptions are a reality

Mattel massive recall due to lead content in paint

Nokia production shut down due to supplier plant fire

Kobe earthquake resulted in computer memory storage, impacting multiple companies

UPS strike severely impacted ability to ship small packages in the U.S.

Terrorist attack in Mumbai, India shut down businesses (including international service providers) for several days

# Develop & Implement Plan to Identify & Assess Risks

## Step 1: Team Selection

- Select a risk assessment team with appropriate technical knowledge and tools
  - in-house
  - third-party logistics inspection company
  - industry-specific verification team as used in pharmaceutical, high tech and forest products industries)
- Factors for selecting appropriate team include cost, return on investment, complexity, expertise, sovereignty, language, culture, objectivity and credibility

# Develop & Implement Plan to Identify & Assess Risks

## Step 2: Gather Information

- Establish regular meetings or conferences with key suppliers, distributors and customers to discuss challenges
- Assign managers to regularly research the financial condition of suppliers, distributors and customers
- Have supply-chain managers mine in-house data to track buying trends and identify discrepancies between invoices and agreed contract pricing

# Develop & Implement Plan to Identify & Assess Risks

## Step 2 (cont.): Gather Information

- Key questions that management should ask:
- Which of our key customer accounts and suppliers are most at risk?
- What is the probability of economic failure on their part, and how does this affect our supply chain?
- If disruptions occur, what are the proposed contingency plans required?
- How quickly can these plans be put in place?
- What is a realistic set of scenarios on what our key customers are facing, and what will the impact on our revenue be in 2009 and 2010?
- How reliable and accurate is our market intelligence on supply-chain risk?
- What channels are available to use to ensure that our information is current?

# Develop & Implement Plan to Identify & Assess Risks

## Step 3: Look for Warning Signs (Suppliers)

- Loss of regular customers/market share
- Increased competition
- Customer complaints piling up
- Declining delivery reliability or quality
- Insistence on payment in advance
- Slower or extended payment of invoices
- Shut-down of major or multiple operating facilities
- Employees discuss internal problems with customers/business partners
- Increased turnover of staff

# Develop & Implement Plan to Identify & Assess Risks

## **Step 3 (cont.): Look for Warning Signs (Distributors/Customers)**

- Large unpaid invoices
- Declining purchases
- Increasing price pressure
- Slower or extended payment of invoices
- Sudden increase in diversification of supply sources
- Shut-down of major or multiple operating facilities
- Critical media reports about company
- Sudden change/ departure of key executives (CEO, CFO...)
- Unable to benefit from early-payment discounts
- Missing or delayed SEC filings

# Develop & Implement Plan to Identify & Assess Risks

## Step 4: Evaluate and Share Information

- For each identified threat, assess the likelihood that (i) such threat will materialize and (ii) the potential damage that would result
- Communicate general and specific risks to risk assessment team as well as expectations of company and government agencies that have oversight – emphasize risks with highest likelihood and greatest potential for damage
- Analyze results, share data internally, evaluate whether to share externally (e.g., with government agencies) and implement reforms

**Communication and Vigilance are Key**

# Develop & Implement Plan to Address Risks

## Address Risks in accordance with priority

- Develop plan to avoid most likely risks (e.g., poor quality)
- Develop a contingency plan to survive most likely risks (e.g., alternative source of service or supply)
- Consider doomsday or worst case scenario (e.g., total restriction on export of applicable goods or services)
- Develop a contingency plan to survive doomsday scenarios (e.g., 60-day inventory warehouse or activate internal service resources)

# Develop & Implement Plan to Address Risks

## Supply Chains

- Implement product testing/service monitoring
- Identify alternative sources of supply or work-arounds
- Ensure that agreements include appropriate protections, incentives and punishments
- Be proactive

## Sales Channels

- Implement customer satisfaction/financial health monitoring
- Identify alternative distribution channels
- Ensure that agreements have appropriate protections, incentives and punishments
- Be proactive

# Develop and Implement Plan to Address Risks

## Practical Solutions

- Think long-term – extended, mutually favorable arrangements will increase likelihood of survival and retention of key suppliers, distributors and customers
  - Discuss new payment policies, credit terms or other plans where there is a solid business case
  - Contractual relationships that extend beyond the current economic crisis limit the risk of losing the most financially secure suppliers and customers to competitors that may be currently willing to lock in agreeable long-term payment and delivery terms

# Develop & Implement Plan to Address Risks

## Practical Solutions (Supplier)

- Be Creative – Consider new types of arrangements
  - Shortened payment terms in exchange for discounts
  - Competitive pricing linked to market indices
  - Serve as a bank for key suppliers in exchange for discounts
  - Consider alternatives to assuage fluctuations due to JIT inventory
- Any reconsideration of commercial terms may provide opportunities to address legal protections in service or supply agreements

# Develop & Implement Plan to Address Risks

## Practical Solutions (Distributors/Customers)

- Be Creative – Consider new types of arrangements
  - Extended payment terms in exchange for price increases
  - Competitive pricing linked to market indices
- Any reconsideration of commercial terms may provide opportunities to address legal protections in distribution or sales agreements

# Develop & Implement Plan to Address Risks

## **Practical Solutions (Distributors/Customers - Understand Efficacy in Bankruptcy)**

- Acceleration of credit terms (net 30 to net 15)
- Change form of payment (from usual check to wire transfer)
- Receipt of payment outside of usual terms (90 days on net 30)
- New Credit Agreement
- Improvement in collateral position, be aware of clawback risk

# Develop & Implement Plan to Address Risks

## **Practical Solutions (Distributors/Customers - Alternatives in the Bankruptcy context)**

- Letters of Credit
- Deposit Control Account
- Payment in Advance
- Earmarking New Loan with New Credit Agreement
- Bailment
- Consignment Agreement + UCC-1 filing
- Setoff (Not Triangular)

# Develop & Implement Plan to Address Risks

## Legal Solutions

- Emergency Relief
  - Compelling a supplier to continue performance during the dispute
  - Prohibit a distributor from selling goods prior to making payment to you
- Right to Set-off
  - Which direction will the majority of the funds flow?

# Develop & Implement Plan to Address Risks

## Legal Solutions

- Choice of Law
- Litigation v. Arbitration (understand most likely claims/disputes – differs for suppliers and distributors)
  - Equitable Relief
  - Speed of Decision
  - Costs
  - Appeal Process
  - Ease of Enforcement
  - Confidentiality
  - Selection of “Judge”/Avoidance of Jury

# Q & A

# Protecting Your International Supply Chains and Sales Channels

Regional Issues and Best Practices for Protecting Your International Supply Chains and Sales Channels

April 23, 2009



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Moderated by:  
Bryan Carter

# Regional Issues – Europe, China, Latin America

## Supply Chains

- Third-Party Manufacturing
- Consumer Protection/Product Liability
- Call Centers

## Sales Channels

- Sales Representatives
- Distributors
- Service Centers
- Government Procurement

# Develop & Implement Plan to Address Risks

## **Legal Compliance - FCPA Protections**

- Written controls and procedures covering all monetary disbursements
- Procedures to address “alarm bells”
- Accurate records of transactions supported in the company’s books
- Written measures and procedures to adequately select and evaluate third parties, including agents and distributors
- Require agents and distributors to sign an FCPA compliance certification
- Audit rights over its agents’ books and records
- Published FCPA compliance policy and provide FCPA training to employees, agents and distributors

## **OFAC, Antiboycott, Import/Export Controls, Privacy**

# Q & A

# Protecting Your International Supply Chains and Sales Channels

International Supply Chain  
and Sales Channels  
Hypotheticals

April 23, 2009



# Scenario 1

## Service Provider Issue

- The COO of your company informs you that your key provider of call center services and IT support for the U.S., based in Manila, Philippines, has asked for accelerated payment terms and that she is generally concerned with respect to the financial well-being of this service provider.
  - What precautions/measures has your company taken to prepare for this situation?
  - What considerations and potential actions would you discuss with your COO?

# Scenario 1 - Comments/Solutions



# Scenario 2

## Distributor Issue

- The COO of your company informs you that the business team projects a significant slowing of sales in Europe for the remainder of calendar year 2009 and the full calendar year 2010 and informs you that he wants to restructure the company's European distribution network, including the termination of existing distributors (including distributors in Belgium and Mexico) over the course of the remainder of the year.
  - What considerations and potential actions would you discuss with your COO?

# Scenario 2 - Comments/Solutions



# Conclusion