



**VIRTUAL INTERNATIONAL TRADE SHOWS**  
**Best Practice Tips and Resource Guide – August 27, 2020**  
**By Jean Shtokal (jshtokal@fosterswift.com)**

Many companies are now operating in the virtual trade show space due to travel restrictions related to COVID-19. We have received a lot of questions in this regard. When common business practices are disrupted, like the international trade show scene, if you don't stick with your best practices and procedures and adapt them to the new reality you can suffer legal compliance failures and derail good risk mitigation strategies you company and legal team have put in place for protection. Here are some best practice tips to consider.

***Intellectual Property Protection (IP) – Best Practice Tips:***

The virtual world is generally much more informal than the real world. It can also advance transactions more quickly. Due to COVID, you might need them to advance more quickly to fill a supply hole or find new customers for inventory. Don't forget about intellectual property protection. Remember to take stock of what IP you have and how it is currently protected. Register your patents, trademarks and copyrights in the U.S. and then work on "internationalizing" key IP wherever you do business, or think you will be doing business, as appropriate. As a best practice and sound risk mitigation strategy, develop an IP rights protection plan with an IP attorney before you talk about a business relationship or attend (virtually or otherwise) a trade show. If you can't achieve protection by filing international trademarks or patents you can use contract strategies to try to protect you brand and proprietary information and technology. Your plan may include U.S., World Intellectual Property Organization (WIPO) and in-Country registrations, contractual protections, U.S. Customs filings, internal security measures and protocols to protect trade secrets and other IP

***Embargoes and Sanctions – Best Practice Tips:***

Embargoes. If you don't know about them, you need to get up to speed. Be sure to know where your product/technology/service can't go (I currently call them the "C-SIN" country and geographic area sanctions). You can find out more about US Treasury Department embargoed countries and groups by reviewing the materials and links on the US Treasury Department Sanctions Programs site <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> and reviewing the US Department of Commerce regulations on embargoes and other special controls <https://www.ecfr.gov/cgi-bin/text-idx?SID=1ea2cbccf9e7f8cd23db7b20ddd8323a&mc=true&node=pt15.2.746&rgn=div5> In addition to no-go countries, there are no-go persons, entities and groups. The US Departments of Treasury, Commerce and State all have lists. You can start by checking the Consolidated Screening Lists search tools and resources on the International Trade Administration website. Here is the link to "The Lists" <https://www.trade.gov/consolidated-screening-list> You should check "The Lists" often, since U.S. embargoes and sanctions can

change frequently. It will also be key to develop a compliance plan and consider these issues when developing marketing plans. There are areas of the world where the list of restricted parties is growing rapidly for certain business sectors on a daily basis. Did I hear someone say “China”?

***Export Controls – Best Practice Tips:***

Classify your product, technology (and possibly service) for export purposes before you share export controlled information about it with a Foreign Person anywhere, (including virtual space and including a Foreign Person present in the U.S.). This is a crucial issue. Also remember that what is controlled for export from the US or reexport is no longer a static list. It changes now more frequently than ever, and this will be our new normal as US export controls try to catch up with US innovation. Your item and related technology may need an export license or other US government approval before you export hardware or share controlled technology or software with a Foreign Person (even virtually). If so, apply well in advance.

For hardware, software, technology and certain services that are covered by US export controls there are more embargoed destinations and more screening lists to check (Commerce and State Department regulations and lists, in addition to Treasury Department lists). You should be sure to retain appropriate records on all exports, including technology exports in virtual space or sent electronically. As you can see, this gets complicated quickly and employee training is essential. The best practice is to develop and maintain an Export Compliance Plan (ECP), and adapt your ECP to the new realities of working remote, virtual trade shows, virtual meetings and work force adjustments.

When working in a virtual world, be sure all participants in a virtual meeting are identified in advance and screened. Don’t stumble into an export control violation. It is also important to be conscious of your “background”. Can material on your desk or export controlled prints, drawings and computer screens behind you on the plant floor be screen-captured? Is your screen share sharing confidential company financial information or emails?

Remember it is possible that your virtual interactions could be recorded (by the host, participants or others using third party software), and even shared with other parties. The laws on this vary in the US from state to state as well as internationally. The safest strategy is to assume you will be recorded. If confidentiality is important, for example sharing proprietary or export controlled information, check export license requirements and use a protected portal.

***Legal Matters Affecting Price – Best Practice Tips:***

If it can affect pricing you should button it down now. You know it will come up in the virtual trade mission space so be sure you have considered all costs now. Some examples include: product or service regulation compliance where the end user or importer is located: certifications and requirements; getting paid and ensuring payment; import laws, duties, tariffs

and fees; export licenses; and local laws affecting costs of sale (agent and distributor indemnities, taxes such as VAT, warranty laws, strict product liability and other).

***Terms and Conditions for Sale – Best Practice Tips:***

Understand local law requirements, there will be some. You should also have your sales terms and conditions reviewed and revised by legal counsel to consider our changing international business landscape. Some things to consider include the following: currency; payment terms; dispute resolution and choice of law (very important now as we see a greater likelihood of breach of contract terms by one or both parties due to COVID); warranty; service and returns; language; product liability laws; consumer protection laws; force majeure and what happens in the case of COVID-Round 2, a lingering global recession, unavailability of materials or components, plant closures and other.

Compliance with applicable laws should be a contractual obligation (no re-export to embargoed destinations, etc.). On that note, remember to include the Destination Control Statement required by the US Department of State and Commerce regulations on your commercial invoice for tangible exports. It's a best practice even when it's not required by regulation.

***U.S. Foreign Corrupt Practices Act (FCPA) – Best Practice Tips:***

The US FCPA prevents US persons (directly or indirectly through those acting on their behalf) from offering anything of value to a foreign official to obtain or retain business. The U.S. Department of Justice website contains unofficial translations of the U.S. FCPA: <https://www.justice.gov/criminal-fraud/statutes-regulations> The terms used in the law have broader meaning than in common parlance (for example, "foreign official," "knowledge," etc.). As noted above, it bears repeating that compliance with applicable laws (specifically including but not limited to the U.S. FCPA) should be a contractual obligation of your third party intermediaries such as foreign sales distributors/agents.

Training for your employees on legal obligations when conducting international trade is essential so they can spot issues before they arise and convey the proper message to your international trade partners and intermediaries. Other countries also have laws preventing corruption and bribery (some of which are broader than the FCPA) and foreign enforcement agencies cooperate with the U.S. Justice Department in investigations and charges. Lapses in protocols can occur in a virtual marketing world (especially with left over end of year marketing budgets in light of reduced travel and no in person meetings and dinners due to COVID restrictions). Be mindful of this and update/adapt your FCPA Compliance Plan, Policies and Procedures. The US Justice Department recently updated its Resource Guide to the US FCPA in July 2020 (now in its Second Edition – 133 pp in length).



***Vetting Trade Partners – Best Practice Tips:***

The virtual world moves fast, but that doesn't mean you should run past your normal due diligence practices. Be sure to run Company names, addresses, individual names and owners through embargo checks and restricted party screening. Do risk based due diligence on potential foreign customers and business partners. This is even more important in a virtual world where you don't have "boots on the ground" in the foreign country to conduct your own due diligence, visit facilities in person, meet staff, etc.

Know Your Customer Guidance and Red Flags from Export Administration Regulations can be found at this link [https://www.ecfr.gov/cgi-bin/text-idx?SID=6cc2762a4a31f9fe7bd6f08ee80d7a3a&mc=true&node=ap15.2.732\\_16.3&rgn=div9](https://www.ecfr.gov/cgi-bin/text-idx?SID=6cc2762a4a31f9fe7bd6f08ee80d7a3a&mc=true&node=ap15.2.732_16.3&rgn=div9)

One of the best ways to avoid legal costs down the road is to spend time up front picking the right trade partners. Conduct enhanced due diligence on foreign business partners such as agents, distributors, brokers, and joint venture partners. Seek assistance from your local U.S. Commercial Service – Export Assistance Center <https://2016.export.gov/usoffices/index.asp>  
[Start by ordering an International Company Profile.](#)

***Cyber Threats and Technology – Best Practice Tips:***

Here are some great resources if you are operating remote and using virtual technology. Many companies are familiar with NIST (National Institute of Standards and Technology). Here is a link to a short piece from NIST on Preventing Eavesdropping and Protecting Privacy on Virtual Meetings (March 17, 2020) <https://www.nist.gov/blogs/cybersecurity-insights/preventing-eavesdropping-and-protecting-privacy-virtual-meetings> The the US Federal Trade Commission also has some helpful resources including a short note on videoconferencing with 10 Privacy Tips for your Business (April 16, 2020) <https://www.ftc.gov/news-events/blogs/business-blog/2020/04/video-conferencing-10-privacy-tips-your-business>

For best practices, looking to how federal agencies protect their information in our video conferencing new normal, check out the US Department of Homeland Security's Cybersecurity and Infrastructure Security Agency – Cybersecurity Recommendations for Federal Agencies Using Video Conferencing (May 1, 2020) in handout format [https://www.cisa.gov/sites/default/files/publications/CISA\\_Cybersecurity\\_Recommendations\\_for\\_Federal\\_Agencies\\_Using\\_Video\\_Conferencing\\_S508C.pdf](https://www.cisa.gov/sites/default/files/publications/CISA_Cybersecurity_Recommendations_for_Federal_Agencies_Using_Video_Conferencing_S508C.pdf)

The FBI also has great resources that haven't yet been updated for the working remote or virtual world but are still full of gold nuggets you can use to protect your company. Here are a few links to the FBI Brochures:

Economic Espionage: Protecting America's Trade Secrets <https://www.fbi.gov/file-repository/economic-espionage-1.pdf/view>

Intellectual Property Protection <https://www.fbi.gov/file-repository/intellectual-property-protection-brochure.pdf/view>

Elicitation Techniques <https://www.fbi.gov/file-repository/elicitacion-brochure.pdf/view>

Foreign business travel <https://www.fbi.gov/file-repository/business-travel-brochure.pdf/view>



Jean Schtokal is an international trade attorney and shareholder with Foster Swift Collins & Smith, PC. She has 20-plus years' experience as an international business attorney and regularly provides counsel and guidance on U.S. Export Control laws and regulations (EAR, ITAR, OFAC) and the FCPA. She has an AV® Preeminent™ rating from Martindale, has been included in *Best Lawyers in America*® 2011-2020 for International Trade and Finance Law.

In addition to her practice, Jean holds many leadership roles and frequently speaks at educational programs for businesses wanting to export. In 2010, she was appointed to the West Michigan District Export Council (West MI-DEC) by the U.S. Secretary of Commerce and has served as chair since 2016. She is a member of the Advisory Board of Center for International Business Education and Research at Michigan State University, serves as co-chair of the Global Business Club of Mid-Michigan and is the Executive-In-Residence at MSU's International Business Center-The Eli Broad College of Business.

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