



Sarbanes-Oxley Impact on international trade

Enacted in 2002, Sarbanes-Oxley, is our nations response to the terrible omission of corporate governance during the last decade. The names; Enron, WorldCom, Tyco, is only the tip of the iceberg. Sarbanes-Oxley (SOX) requires the CEO and CFO of publicly held companies to certify to the Securities and Exchange Commission that its internal controls are adequate to insure: 1) the proper authorization of the company's transactions; 2) the company's assets are safeguarded against unauthorized or improper use; and 3) the company's transactions are properly recorded and reported to permit preparation of financial statements in conformity with generally accepted accounting principles.

In other words, a company is expected to have sufficient internal controls in place so that management can reasonably assure the reliability of its financial reports and financial statements to external users, especially shareholders. SOX is intended to protect a company's assets and to give shareholders an accurate and complete picture of how the company is making and spending its money.

But why should SOX affect international trading activities? When Customs audits an importer, one of the criteria insisted upon is that a company have documented internal controls. This speaks directly to the core of SOX. This then simply emphasizes the role of strong internal controls – even for companies that are privately held. Customs auditors do not distinguish between those company which are privately held and those which are publicly traded. All are required to adhere to the same standard. The same is true when dealing with other regulators, including the U.S. Attorney's Office in the event of criminal cases. In fact, if a company is involved in a criminal case and the crime arose from circumstances which were not handled in accord with the company's internal controls, under sentencing guidelines, a downward sentence adjustment is called for.

The impact of SOX (strong internal controls) addresses compelling issues that are often ignored by Exports and Importers. For Exporters; does the company screen for licensing requirements and prohibited end users and uses? If a company does not screen, it exposes itself to serious penalty action and/or criminal prosecution.

For Importers: What does a company do to determine the correct classification and value of its goods? What does a company do to make sure the same goods are entered identically at each port of entry?

SOX is not intended to reach every mistake, only those which materially impact the company's bottom line. In other words, a \$1,000 mistake gets viewed differently than a \$100,000 or \$1 million mistake. Whether publicly traded or not, the internal controls demanded by SOX are a good idea for all companies, regardless of size, for purely sound business reasons. The bottom line is not helped by unexpected duty increases, seizures, penalties, shipment delays/costs or, worst of all, bad publicity - all of which inevitably undermines brand name value. There is nothing worse than trying to explain to a buyer that you are unable to deliver the order because your own government won't let you ship!