



709 Establishing an International Trade Compliance Program for Your Company

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Faculty Biographies

Carol A. Fuchs

Carol Fuchs, as Tyco's International Trade counsel, is responsible for managing Tyco's worldwide import/export compliance program. Tyco is a major importer and exporter, with approximately 250,000 employees and activities in over 100 countries. Ms. Fuchs provides guidance to senior business managers on a broad array of trade matters, including the development of documented compliance programs for business units and facilities worldwide.

Previously, Ms. Fuchs was government relations counsel in the DC office of KMZ Rosenman. Before joining KMZ Rosenman, Ms. Fuchs was vice president and director, global trade compliance, at Motorola where she managed Motorola's trade compliance programs worldwide. Previously, Ms. Fuchs served as legal counsel to the Defense Fuel Supply Center, where she was awarded the meritorious civilian service award.

Ms. Fuchs completed two terms serving on the U.S. Commercial Operations Advisory Committee (COAC), a committee actively advising high-level government officials (Treasury and Department of Homeland Security) on customs issues and new trade programs. She also served on the American Association of Exporters and Importers (AAEI) Board of Directors and Executive Committee. She is a frequent public speaker at events sponsored by AAEI, the ABA, Symposium of the Americas, National Customs Brokers and Freight Forwarders Association (NCBFFA), Joint Industry Group (JIG), American Conference Institute (ACI), Society for International Affairs (SIA) and the World Customs Organization (WCO).

She graduated cum laude from Carleton College and received her law degree, also cum laude, from Georgetown University.

Randy E. Godard

Randy E. Godard is an assistant general counsel with Johnson & Johnson (J&J), located at the Latin America Regional Offices of the J&J Medical Devices & Diagnostics Group in Miami. In addition to his responsibilities providing legal counsel to the Latin American organization, he provides counsel on international trade sanctions, antiboycott compliance, global cryptography regulations and anti-counterfeit activities to the global J&J companies.

Prior to joining J&J, Mr. Godard served as in-house counsel for Borden, Inc. in Columbus, Ohio and for Allied-Signal, Inc. (currently Honeywell) in Lyle, Illinois and Houston. He has been providing counsel on Latin American law and business for 22 years and on international trade issues for 15 years.

Mr. Godard received a B.A., M.B.A. and J.D. from the respective general, business and law colleges at Brigham Young University.

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Session 709

Establishing an International Trade Compliance Program for Your Company

October 24, 2006

Carol Fuchs
International Trade Counsel
Tyco International



Staffing and Resources

- Corporate culture.
- “Outsourcing” compliance.
- Reporting structure.
 - Logistics v. Law v. Finance v. Other.
 - Centralized?
- Tyco model:
 - International Trade Compliance Officers (ITCO’s).
 - Regional ITCO’s and Regional Compliance Counsel.
- Internal communications.



Examples of Trade Compliance Meeting Agenda Items

- Introductions
- Regional Updates
- Corporate Policy Revisions
- Distributor Guidance
- Voluntary Disclosures – Lessons Learned
- Corporate Audit Results
- EU Retaliation
- China “Catch All” Reg
- Currency Fluctuations
- US/Australia Free Trade Agreement
- ACE Update
- C-TPAT
 - Validation
 - Portal

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How can you collect and maintain information about legal requirements of different countries?

- Identify good local experts.
 - Word of mouth; confirm expertise really exists.
 - Be prepared for rates even higher than NY!!
- Examples:
 - EU Export Controls “Helpline.”
 - Customs Manual Supplements.

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File Edit View Insert Format Tools Data Window Help Type a question for help

SAMPLE

A	B	C	D	E
TOPIC	QUESTION	YES	NO	COMMENTS
GOVERNMENT WEBSITE	Is there a government website with information about the importing country's customs requirements? If YES, provide URL in Comments field.			
	Is the government website in English?			
VOLUNTARY DISCLOSURES	Does the importing country have a formal procedure allowing an importer to minimize penalties by voluntarily disclosing a violation?			
RELATED PARTIES	Does the import declaration require an importer to identify whether the exporter and importer are related?			
COUNTRY OF ORIGIN	Does the importing country require a country of origin marking on the imported article itself?			

Sheet1 / Sheet2 / Sheet3



Compliance Education

- Leave home.
- Engage the audience.
- Use handout materials.
- Translate key information.
- Educate often.
- Keep records.

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SAMPLE



**CHINA EXECUTES TWO FOR
SMUGGLING COMPUTERS**

Associated Press
Chicago Tribune

December 7, 1998



SAMPLE



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SAMPLE

What You Need to Know
你需要了解的事项

Imports

进口

- What is it?
 什么是进口?
 (HTS Classification)
 (部S分类)
- How much is it worth?
 价值多少?
- Where was it made?
 产于何地?
- Is the cargo secure?
 货物是否安全?

Exports

出口

- What is it?
 什么是出口?
 (ECCN Classification)
 (ECCN分类)
- What is the end use?
 最终用途是什么?
- Where is it going?
 出口至何处?
- Who is the end user? Other parties?
 谁是最终用户? 其他方?

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SAMPLE

References to the United States 凡提及美国

- If U.S. location is mentioned –
如提及美国地点 –
- Country of origin marking cannot mislead or confuse.
原产国标示不得产生误导或混淆。
- Reference to U.S. location triggers special requirement.
凡提及美国地点，均会有特殊要求。
- Country of origin must appear:
原产国必须有：
 - Same or larger letters.
相同或大号字体。
 - In close proximity.
十分接近。
 - Same type letters.
相同类型字体。

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SAMPLE

Marking of Kits / Sets 套件 / 批件标示

- If the materials or components are not substantially transformed as a result of their inclusion in a set or mixed or composite good, then each item must be individually marked to indicate its own country of origin.
如果原料或 件包含于成套、混合或合成产品内，且并未因此产生实质性改变，则必须对各个商品分别标记，标明其原产国。

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SAMPLE Training Sign-In Sheet

7	First Name	Last Name	E-Mail Address	Business Segment	Business Unit	Job Function	Country	Initials
9	Carol	Fuchs	cfuchs@tyco	Corporate	Corporate	Trade Counsel	USA	

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Audits and Self-Assessments

- High-level “red/yellow/green” assessment.
- Detailed internal audit templates.
 - Balance rigor with expediency.
 - Train corporate auditors.
 - Worksheets for each topic.
 - Provide template electronically.
 - Translate.
 - Document audit findings.
- Peer exchange.

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A	B	C
Business Segment: _____		
Business Unit: _____		
Location: _____		
Person Conducting Review: _____		
Date of Review: _____		
		SAMPLE
		RED/YELLOW/ GREEN OR UNKNOWN
1. Senior management demonstrates an appropriate "tone at the top."		GREEN
2. Employees directly and indirectly involved with import/export activities receive appropriate specialized training.		YELLOW
3. Internal reviews are conducted regularly, with results and corrective action plans documented and reported to management.		RED
4. Transactions are screened for entities on denied party and similar lists.		GREEN
5. Import and export licenses are obtained when required by law.		YELLOW
6. Both import and export classification databases are current, complete and accurate.		RED

SAMPLE

(Pull and review sample Customer and/or Customer Shipment files to supplement answers to questions 12.d. thru 12.w. Use the Customer Screening Sample Form to document your responses.)

	Yes	No	N/A
12.a Is there a written procedure which explains how the required customer checks are to be performed (e.g., Denied Persons List, OFAC and restricted parties lists, Proliferation Entities List, Nonproliferation Red Flags, etc.)? If yes, please provide a list of all customer screening lists that are used. Comments:			
12.b Does the written procedure specify who is responsible for performing the required customer checks? Comments:			
12.c Have all the responsible individuals required to do customer checks received training? Comments:			
12.d Are the customer checks performed on a per customer or per order basis? Comments:			

10 - Use of Proper License / 11 - Classification / 12 - Customer Screening / 13 - Contr...

Slide 5 of 6 Bold Stripes



SAMPLE

Customs Valuation – Transaction Value

- Preferred method is transaction value.
- Price actually “paid or payable.”
- Hierarchy of alternative methods.
- **AUDIT QUESTIONS:** Does stated value on entry documents match price actually paid? Is there an invoice “for customs purposes” with value different from paid actually paid?



SAMPLE

Customs Valuation - Additions

- Price “paid or payable” plus certain additions:
 - Royalty or license fees paid by buyer as a condition for the product to be exported to the U.S.
 - Assists. (Examples: tools, dies, molds, production materials.)
 - Packing costs paid by buyer.
 - Proceeds of any subsequent resale of the goods transmitted to the seller.
 - Some countries include freight and insurance (e.g., EU).
- **AUDIT QUESTIONS:** If assists are provided or if royalties/license fees are paid to the manufacturer, is the cost included in declared value?

Previous Zoom Print... Setup... Margins Page Break Preview Close Help

**SAMPLE
CORPORATE AUDIT FINDINGS
JULY 2006**

SCORE	BUSINESS UNIT A	BUSINESS UNIT B	BUSINESS UNIT C
CRITICAL	1. No documented procedures and assignment of responsibility.	1. No important classification database.	Miami, US
		2. Incomplete formula for determining NAFTA status.	New York, US
IMPORTANT	1. Declared value doesn't match invoice.	1. "Made in USA" markings.	Miami, US
	2. No procedure for consistently reporting assists.		1. In some cases, broker is determining HTS. 2. Bonded warehouse procedures.
MINOR	1. Missed NAFTA opportunities.	1. Unit of measure discrepancy on one shipment.	Dallas, US
	2. Unreported insurance costs.	2. Use separate suffixes for separate facilities.	Houston, US
			1. Unreported insurance costs.
			Rome, Italy
			Swindon, UK

Page 1 of 1 NJM



Session 709

Establishing an International Trade Compliance Function for your Company

Faculty:

- Roger McCrary, Bayer Corp.**
- John Grayston, Eversheds LLP**
- Carol Fuchs, Tyco International, Inc.**
- Maureen Pearson, Delphi Corp.**
- Randy Godard, Johnson & Johnson**
- Ken Weigel, Alston & Bird LLP**

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Agenda

- Group 1: Fundamental Issues
- Group 2: Practical Applications
- Please ask questions at any time



Globalization: Increased Opportunity and Risk

- Trade Compliance is increasingly critical to the international company's bottom line
- **Recent Penalties:**
- Ford cases (imports): >\$30 Million
- Titan (anti-corruption): \$28 Million
- Exports
 - Dual Use - \$6.7 Million in 2005
 - Military - \$22 Million YTD 2006



U.S. Compliance Regimes – A Primer

● Imports

- U. S. Customs & Border Protection (CBP)
- Located in Dept. of Homeland Security
- Mission: "...enforce the laws of the U.S. while fostering our Nation's economic security through lawful international trade..."
- <http://www.customs.ustreas.gov/>



U.S. Compliance Regimes – A Primer

● Exports:

- Bureau of Industry and Security (BIS)
- Located in the Dept. of Commerce
- Dual use items (non-military)
- Mission: "Advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership."
- <http://www.bis.doc.gov/index.htm>



U.S. Compliance Regimes – A Primer

- **Exports:**
 - Directorate of Defense Trade Controls (DDTC)
 - Located in Dept. of State
 - Control of military items
 - Mission: “Advance national strategic objectives and U.S. foreign policy goals through timely enforcement of defense trade controls and the formulation of defense trade policy.”
 - <http://pmdtc.org/reference.htm>



U.S. Compliance Regimes – A Primer

- **Anti-Corruption:**
 - Foreign Corrupt Practices Act (FCPA)
 - 15 USC 78dd-1 et seq. / OECD Convention
 - Co-enforced by Dept. of Justice and Dept. of Commerce
 - Illegal to obtain commercial advantage by illicit payments to foreign officials



U.S. Compliance Regimes – A Primer

- **Foreign Policy:**
- Office of Foreign Assets Control (OFAC)
 - Dept. of Treasury
 - Embargoes and Sanctions
 - Mission: "...administers and enforces economic and trade sanctions based on US foreign policy and national security goals..."
- Antiboycott
 - BIS and IRS
 - Prohibits economic activity in support of the Arab League boycott of Israel



U.S. Compliance Regimes – A Primer

- **Anti-Proliferation:**
- Chemical Weapons Convention
 - Dept. of State
 - Companies must comply with U.S. treaty obligations
- Enhanced Proliferation Control Initiative
 - Executive Branch / BIS
 - Nuclear, Biological, Chemical, Missile
 - Bars unlicensed exports in furtherance of undesirable proliferation



Key Takeaway

- A COMPANY CANNOT OUTSOURCE RESPONSIBILITY FOR ITS INTERNATIONAL TRADE COMPLIANCE



Companies cannot outsource responsibility

- Liability for the company's international trade activities rests with the company
- The (proper) role of the broker / forwarder
- Roles of other parties to the international transaction



What your company must do to take responsibility and achieve compliance

- Point 1: Your company needs an appropriate internal knowledge base – a “Center of Expertise” (COE)



Center of Expertise

- One person? Or a department?
- COE must know the business
- COE must know the relevant law
- COE must be able to bridge the gap between legal requirements and business operations
 - Solutions must focus on the most prominent business operations and key applicable laws



Center of Expertise

- COE must have authority
- Rank: COE should be positioned to be heeded by top management and obeyed by operations
- Status: COE should have sufficient knowledge and experience to command respect
- Status can be gained over time, but the wrong rank can prohibit optimal performance of the compliance function



Center of Expertise

- COE must be able to communicate
- To top management – high level discussion of how the function fits into the business plan and operational structure
- To operational personnel
 - Clear statements of requirements
 - Make their jobs easier, safer, better



Center of Expertise

- The COE must be able to demonstrate value
- ROI: show an increasing positive impact to the bottom line
- Show a cumulative effect on compliance as new controls layer over the others



What your company must do to take responsibility and achieve compliance

- Point 2: Locate the compliance function appropriately



Appropriate Location for the Compliance Function

- Law Dept.?
- Procurement?
- Tax Dept.?
- Finance?
- Logistics?



Appropriate Location for the Compliance Function

- Questions to ask:
 - Where will the function be most effective?
 - Who will allow it to operate independently?
 - Where can resources be more easily obtained / preserved?
 - The “Fit Factor” – intangibles
 - Mislocated? – Move it!



Appropriate Location for the Compliance Function

- More questions to ask:
- What is the business plan?
- What are the key strategic concerns?
- Where will the function receive growth support?
- Where do the opportunities lie?



What your company must do to take responsibility and achieve compliance

- Point 3: What are the roles for in-house and outside counsel?



The Role of Counsel

- In-House:
- Part-time? Full-time?
- Gatekeeper?
- Front-to-back solutions?
- What are the areas of greatest need – focus expertise there



The Role of Counsel

- External:
- Generally depends on the company's level of expertise
- What can they do that in-house can't?
- Special / complex issues: audits, investigations, issues with a public or scandalous dimension



The Role of Counsel

- External – Best Practices:
- Proper utilization of external counsel results in superior legal value and results
 - Make up for obvious internal deficiencies
 - High impact issues – a second set of eyes
 - In-house can learn from external
 - Leverage the relationship



What your company must do to take responsibility and achieve compliance

- Point 4: Take into account who the parent company is
 - U.S. or foreign?



Taking into account who the parent company is – U.S. or foreign

- Organization
 - How is the company organized - Tight central control or loose confederation?
- Support
 - How does the parent support the compliance activities of the subsidiary?
- Comprehension
 - If the parent is foreign, what is the level of sophistication on U.S. compliance? What are the main business activities / relationships?
 - How is business planning done?
- Communication / education
 - Is there an organization in the foreign parent / subsidiary to act as a counterpart to U.S. compliance function?
 - Are there direct personal counterparts to the key U.S. individuals?
 - Is there any regular structured information exchange?



What your company must do to take responsibility and achieve compliance

- Point 5: Implement the best practices of top shelf compliance organizations



Best Practices

- Management commitment
- Company policy
- Customized procedures
- Center of expertise
- Training
- Auditing
- Automation

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Best Practices

- Management Commitment
- Genuine engagement needed – not just words on paper
- Help management make an educated decision to support compliance efforts
- Create a proper record
 - Unanimous consent of the Board of Directors

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Best Practices

● Company Policy:

- Include a commitment to comply with current applicable regulatory and statutory requirements
- Be visibly endorsed by top management
- Clearly state overall / broad compliance objectives
- Include a commitment to continuous improvement
- Be documented, implemented and maintained
- Be communicated to all relevant employees
- Provide for periodic review and revision
- Be consistent with other organizational policies



Best Practices

● Customized Procedures

- Procedures should support the Policy at the operational level - reflect reality
- Procedures should be considered fluid documents, able to be updated regularly as regulations change, and in response to business developments
- Make sure operational people are involved in writing/approving
- Procedures should be drafted on the quality concept of "*We say what we do -and- we do what we say*"
- Use a standard quality program format, but you do not necessarily need to comport to a ISO/QS standard
- Maintain historical versions, redlines, approvals, etc
- Use electronic documents
- Make widely available: post to your intranet



Best Practices

- **Center of Expertise**
- COE must:
- Be able to bridge the gap between legal requirements and business operations
- Have requisite authority
- Be able to effectively communicate
- Be able to demonstrate value



Best Practices

- **Training**
- Create trainee rosters by subject matter
- Systematize your effort
 - Automation
 - Periodic re-training
 - Require competency (testing)
- Make a record



Best Practices

- **Auditing**
- Needed to effectively assess and manage risk; and to improve upon deficiencies
- Audit to internal as well as external standards
- Utilize a published audit process
- Perform root cause analysis and corrective actions
- Use govt. (e.g., ACE portal) and internal data (SAP) to look for anomalies – target these

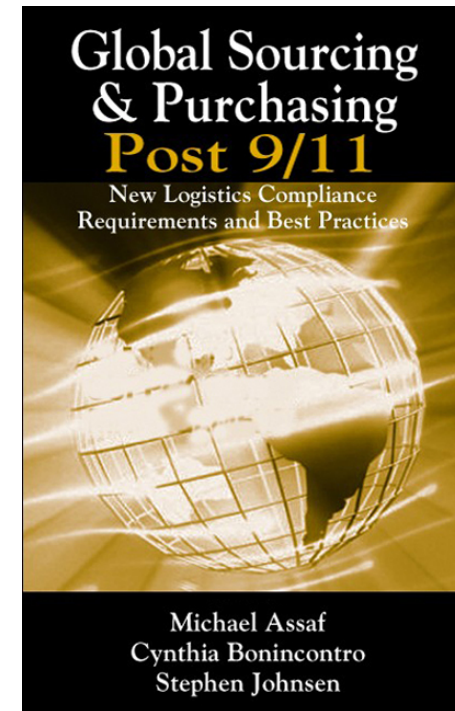
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An excerpt from:
*Global Sourcing & Purchasing Post 9/11:
New Logistics Compliance Requirements and Best Practices*
ISBN 1-932159-39-8

Whitepaper Submitted by Roger McCrary for Panel Discussion:
"Establishing an International Trade Compliance Program for your Company"

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MY COMPANY DOES NOT HAVE A COMPLIANCE PROGRAM — WHERE DO I START?

If you are sourcing goods globally in the post 9/11 era, sooner or later your company will need to address the “compliance” issue. Otherwise, the newly created inbound supply chain operation may face major delays, fines, penalties, and/or bad press. Any company should strive to be a “reasonable care” importer and take the necessary steps to ensure the security and safety of its inbound freight to the U.S. If your company does not have any compliance program or lacks an informal program, we advocate that your company create or formalize a Customs compliance program. There are ten elements that are crucial to a successful compliance program. These elements are listed below with a brief narrative provided for each.

1. Senior Management Support

Management commitment and support, or lack thereof, may well be the single biggest key to the success or failure of a company’s compliance program. In order for the compliance program to be successful, the company’s highest management must fully support compliance. Compliance should be interwoven into the company’s vision, values, and code of conduct. A company’s CEO should be ultimately responsible for the compliance of the company. A company’s compliance policies should be ratified by the board of directors and signed by the CEO. A company’s management should also commit to compliance by providing adequate resources to ensure the success of the program.

2. Written Policies and Procedures

A successful compliance program must be one based on internal controls. Today, a company may be 100 percent compliant for its international business, however, if internal controls are nonexistent (such as written policies and procedures), a company could easily commit an expensive violation the next time the “import guy” is on vacation. The bottom line for global procurement has been affected. To avoid major problems, companies should adopt a Customs Compliance Manual (CCM), as well as set formal company policy for import and Customs compliance. The CCM is the procedure manual that supports the policies at the operational level. The policies should be regularly reviewed, signed again by the CEO, and communicated company-wide on an annual basis. The CCM should be considered a fluid document, updated regularly as regulations change or if procedures are determined to be inefficient or ineffective. The CCM procedures should be drafted on the quality concept of “we say what we do and we do what we say.”

3. A “Center of Expertise”

Activities affecting compliance can occur far and wide across a company, including some hard-to-find places. The rules and regulations involved in global sourcing and logistics are vast to say the least, and they can impact personnel in almost every department of the company. A research scientist, inventory planner, or accountant should not be expected to know this vast number of rules, nonetheless, they should have a contact available who does. Companies should create a centralized Compliance Department headed by at least a director-level manager to serve as the company’s “center of expertise” on compliance matters.

The Compliance group should be comprised of an experienced and knowledgeable staff and should receive sufficient resources to ensure that the group remains a center of expertise. The Compliance staff should regularly attend

seminars and training in order to stay abreast of the latest compliance developments. The staff would arrange face-to-face meetings with government agencies to understand their roles, positions, and requirements. They would then supply this information to a supply chain operation. This center of expertise should also be recognized company-wide as the voice of the company organization on all applicable compliance matters when dealing with any government agency; that is, communication with the government should only occur through this group, presenting “one face” to the government agencies.

4. Responsible Compliance Personnel

Another key to a successful compliance program is to have a network of personnel responsible for varying aspects of compliance at multiple levels throughout the company. As mentioned previously, the CEO should be ultimately responsible for the company’s compliance. Any government agency will look favorably on commitment to compliance from the top of the organization.

A company should create a Compliance Control Unit (CCU), reporting to the CEO for compliance purposes. The CCU’s administrator should be the head of the company’s compliance center of expertise, the Compliance Director, who is charged with handling the day-to-day activities of the CCU. The CCU should be comprised of senior management representing each of the key stakeholders for the Compliance Department. For example, the CCU contributing members may be the heads of supply chain or sales/marketing for each of the company’s divisions or business units. The CCU should also include a legal representative, ideally an attorney from the General Counsel’s office who is charged with responsibilities for trade compliance. The Compliance Director should identify the proper CCU members and the CEO should formally invite them to serve in that capacity.

The CCU should meet at least quarterly to discuss compliance matters and should set the company’s compliance procedures by consensus. By creating a CCU that consists of the key stakeholders, the compliance procedures can be written in such a way that business processes are not hindered and business processes can be developed that do not compromise compliance.

Reporting to the CCU should be the next line of compliance personnel, those at the operational level. Wherever shipments are processed globally (for example, site, divisional, or centralized), Control Officers (CO) should be established, such as Import Control Officers (ICO), Foreign Trade Zone (FTZ) Administrators, etc. These officers are the personnel with operational responsibility for shipments and should be empowered to determine whether any given shipment can occur (see Figure 7.2). The CO must be well trained on compliance matters, as he/she will be the person most intimately involved with the

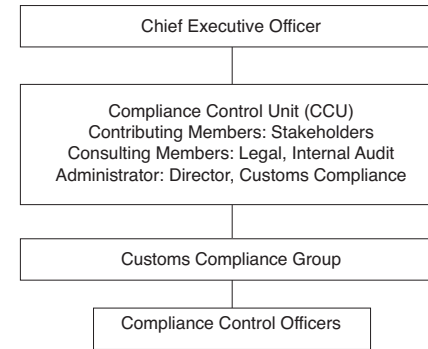


Figure 7.2. Tier structure of Compliance group.

actual shipments. The Compliance group would provide the necessary training and guidance as well as audit the function. A CO should report to the CCU for compliance responsibility. The CCU will set certain compliance goals and objectives for the CO. The CO’s supervisors should be required to seek the input of the Compliance Director when preparing their performance reviews.

5. Accountability

A compliance program without accountability is like a tiger without teeth. All company compliance personnel should have incentives for ensuring compliance. For example, the CO should have certain compliance objectives. If the CO exceeds expectations on compliance objectives, he/she should be proportionally rewarded during the next performance review. On the other hand, a company should also include disincentives for noncompliance. A company’s compliance policies should include disciplinary action for noncompliance up to and including termination for a willful or grossly negligent action.

6. Training Programs

A company can have all the compliance procedures in the world, but if no investment is made in training, the compliance program will surely fail. As mentioned previously, compliance matters are far-reaching. Personnel in virtually every department of the company can encounter an issue that requires some

knowledge of the Customs compliance program. Any one of these individuals could add unnecessary costs, delays, or create compliance issues for a company if they lack compliance awareness. Listed below are several recommendations for a compliance training program.

- a. **Policy training** — Every employee should receive training on the compliance policies on an annual basis. A recommendation would be to conduct this in an automated fashion, such as either on-line or via e-mail. We also recommend that the Customs compliance policy training be combined with some other existing annual compliance training, such as business ethics, Sarbanes-Oxley, and antitrust.
- b. **Target training to job function** — For any employees either directly or indirectly involved in the import distribution and logistics process, training modules should be established based on job function. For example, an accountant can have a much different training program than a logistics representative. Repetitive training is recommended for any employee directly involved in the import distribution and logistics process. Any such employee should receive a refresher course at least biennially.
- c. **Automated training** — Based on our experiences, face-to-face or otherwise facilitated training sessions for a large audience have proven ineffective in a large company. The biggest weakness that has been identified with facilitated training sessions is low attendance. Simply put, in a large company, there is always something more important to do than to commit to one to two hours of compliance training. A company should automate its compliance training by offering the training modules on-line. Employees can take the required courses at their leisure and start and stop as they please.
- d. **Required competency (testing)** — Training may be a worthless effort if no one learns or gains anything from it. For this reason, a company should include competency testing as part of its training programs. This is especially critical if the training is automated as described above. Employees required to take the training should also be required to obtain a passing grade on an automated test that immediately follows the training session. If a passing grade is not achieved, the employee should be required to retake the session. This technique encourages the employee to apply him- or herself better to the training at hand.
- e. **Compliance Council** — For those most intimately involved with compliance activities throughout the company, a Compliance Council should be established that meets at least three times a year. The COs are the targeted members of the Compliance Council. The Council meetings are

to be hosted by the Customs Compliance group and will provide the CO with pertinent updates to regulations and company procedures. Ideally, Council meetings will feature guest speakers from pertinent government agencies, supply chain operations, suppliers, regulatory groups, forwarders/brokers, law firms, and even a company in a similar industry to benchmark your activities and processes.

7. Auditing

A world-class compliance program must include an element of monitoring or verification of the effectiveness of the compliance internal controls. A compliance program should include annual auditing of each shipping/receiving location. Once a sufficient number of audits have been conducted to assess risk properly, certain sites may be audited less frequently, for example, biennially. A company's auditing process should be based on quality principles, with a documented and public audit process; that is, the audited site should fully expect and understand what the auditor will be seeking. The audits must be designed to verify the effectiveness of the company's procedures as well as to identify any areas of systemic noncompliance. Any nonconformity should undergo a root cause analysis followed by a formal corrective action process.

8. Communication

The success of any program depends on good communication. This is especially the case for a compliance program. The Customs Compliance group should be charged with providing regulatory updates to both those directly and indirectly involved in import distribution and logistics. An example of these updates is a *Federal Register* notice with a summary of the regulation change and its impact to the company. The Customs Compliance group must also form a communication network of individuals who support the company's overall compliance. For example, regular communication and interaction with the Law and RA Departments will be a critical avenue for driving the compliance program's success forward. It is also essential to have open communication between internal departments within a supply chain that markets imported products. If the compliance requirements are not secured, this will have a direct effect on the distribution of an imported product.

9. Authority

If the Customs Compliance group is not given ample authority to enforce the company's compliance policy and procedures, the program can be weakened or

even fail. For this reason, a Compliance group must be considered a governance body, charged with not only setting (through the buy-in of the CCU), but also enforcing, the company's compliance policies and procedures.

10. An Automated System

If all of the above nine elements are present, any company will prosper in a strong, well-organized compliance program. If the compliance program is to be global in nature, it cannot reach the status of "world class" unless the company implements an automated compliance system. There are numerous software products currently available (such as Vastera, Open Harbor, NextLinx, OCR Services, and TradeBeam) that allow a company to automate its compliance screens and integrate them into the order-processing and logistics systems. Many of these products are capable of integrating multiple country requirements and all provide a systematic method of blocking noncompliant shipments. A company should evaluate the automated compliance products currently available and implement the one that is best suited to the company's products, processes, and order-processing system. The global implementation cost of such a product can easily run into seven figures. However, cost evaluations must include the impact of expensive penalties resulting from noncompliance issues and the risks that can be eliminated as a result of automation.

A VISION FOR YOUR COMPANY'S CUSTOMS COMPLIANCE GROUP

Any Customs Compliance group should be a world-class compliance organization and on the leading edge within its industry. Internal customers will value the services and will consider the company group as partners in their business processes. The government agencies with which the group interacts will have a certain level of respect and trust for the company because of the top performance and trust partnership with them. They will view your company as a responsible company. This vision will be recognized through performance in internal and external audits and through participation in compliance industry programs. For example, this vision can be fulfilled and the company will have gained further recognition when asked to present its successes at popular compliance seminars such as the American Association of Exporters and Importers' (AAEI) annual update. The CBP recently published "Best Practices for Compliant Companies" in conjunction with their Importer Self Assessment (ISA) program. They are provided verbatim below and can be found on the Customs website (www.cbp.gov).

1. **Have management's commitment.** — *(Control Environment)*
Demonstrate management's commitment to compliance.
 - Establish a statement of corporate policy that addresses Customs and Border Protection (CBP) matters.
 - Solicit a statement from the Board of Directors that assigns authority and responsibility to the customs group.
2. **State compliance and cost goals.** — *(Risk Assessment)*
Identify and analyze relevant risk and develop internal goals to manage the risk.
 - Conduct post-entry reviews and compare these against established goals.
 - Determine how risk areas should be managed.
 - Resolve control weaknesses in a timely manner.
3. **Develop formal policies.** — *(Control Activities)*
Develop, implement and/or modify formal policies and procedures to ensure that management's goals and objectives are met.
 - Verify the accuracy of the Internal Control Manual to ensure processes and procedures achieve prescribed goals and objectives.
 - Modify controls that are ineffective or inefficient and report to management.
 - Define accountability and controls in job descriptions.
4. **Establish training programs.** — *(Information & Communication)*
Ensure that employees receive appropriate training and guidance to effectively discharge their responsibilities.
 - Convey pertinent information to the right people at the appropriate time.
 - Disseminate CBP information via company's communication system (i.e. intranet, bulletin board, mail).
5. **Conduct internal control reviews.** — *(Monitoring)*
Conduct periodic process reviews to assess the performance quality of the internal controls.
 - Use external or internal audit to periodically review each business unit to confirm that corporate policies are implemented and mandate corrective action when necessary.
 - Adjust testing in response to changing risk.
6. **Create compliance group.** — *(Information & Communication)*
Establish a customs group.
 - Foster open communication channels between all departments that may be involved in the CBP processes.

- Establish control activities and self-testing processes to verify the accuracy of the company's internal control system since the quality of the information generated affects the ability of management to make decisions.
7. **Access executives for needed resources.** — (*Control Environment*)
Raises the importance of the Customs group and provides adequate authority for the group to interact with other departments as needed.
 - Organize the customs group so that it is visible to top-level management (e.g. attaching to tax or legal department/division).
 - Provide an awareness of supply chain structure. Many executives know their sales figures but do they know their key import statistics and suppliers?
 8. **Develop compliance requirements for suppliers.** — (*Control Activities*)
Develop contract language on purchase agreements.
 - Develop and implement controls to help ensure that CBP transactions are valid, properly authorized and accurately processed.
 - Request suppliers provide regulatory reporting information when applicable (NAFTA, GSP, etc.).
 - Exercise reasonable care over operations performed by service providers.
 9. **Establish a record-keeping program.** — (*Control Activities*)
Establish a record-keeping program.
 - Maintain a record keeping system that forms an audit trail from production control through payment to CBP entry.
 - Provide supporting documentation for CBP transactions in a timely manner.
 10. **Partner with Customs & Border Protection** (*Information & Communication*)
Enhance partnership by:
 - Participate in voluntary CBP programs such as: C-TPAT, CSI, ISA, FAST, ACE and etc.

The ten elements for a successful Customs compliance program proposed in this chapter are designed to fulfill Customs' best practice standards. If a company were to implement the ten elements outlined above under strong leadership, the company would enjoy a world-class compliance program for

years to come. Any corporation can rise to the challenge to transform their compliance program or develop one from the ground up.

CONCLUSION

This chapter was intended to provide another level of detail to the four main elements of focus for Customs: Classification, Valuation, Country of Origin, and Marking. In order to ensure internal controls for providing accurate clearance information for any imported product, a compliance tier structure is vital and would reflect the company positively to Customs. Creating a Compliance Department will provide numerous perks, including a central area of expertise on government requirements, fielding compliance issues for new product launches, and providing one face to the government agencies. Focus Assessments and other audits by Customs and the government agencies can be subjected on any importer at any given time. Customs has been known to conduct an unexpected, impromptu spot visit. It is imperative that the right compliance structure be in place to disseminate the essential information needed to those involved within the inbound supply chain arena. The next chapter will address trade optimization in which readers will sharpen their sourcing skills to gain further savings. The government offers many duty-free options to importers. We advise you to learn what they are and take full advantage of them.



This book has free materials available for download from the Web Added Value™ Resource Center at www.jrosspub.com.