

Trade Compliance & Exports

**GETTING MAXIMUM RESULTS WITH
LIMITED RESOURCES**

**CREATING A PRACTICAL, RISK-BASED
TRADE COMPLIANCE PROGRAM**



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Hypothetical Company “A”

- Fortune 100 Company with 25,000 employees in 30+ locations including a Free Trade Zone
- Consumer product manufacturer featuring encryption
- Most suppliers are from China
- Company branches in Canada and Mexico
- All sales through company employees and web (E-commerce) portals including auction site “stores”
- Dedicated compliance staff of 15
- Sophisticated IT system screens E-mail content and categorizes
- ERP system with integrated export module



What Trade Risks does Company “A” Face?

- Decentralized structure – how do you keep track of daily operations at 30 locations?
- Consumer Product Safety regulation compliance
- Supply chain integrity risk due to foreign suppliers
- Corruption risk in Mexico
- NAFTA compliance
- E-Commerce compliance (OFAC)
- Deemed export risk
- New Conflict Minerals Regulations
- Over-reliance on ERP system?



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Hypothetical Company “B”

- Mid-sized company (<\$1B) with 750 employees all in one location
- U.S. Defense Contractor
- Both Commercial and Defense products
- All sales through dealers/distributors and agents
- Subsidiaries and branches in Russia, Brazil, Dubai, Afghanistan, Mexico, China and South Korea
- Dedicated compliance staff of 2
- No ERP system
- Have outsourced IT services to India
- Most suppliers are from North America
- Broad use of video conferencing and IP telephony



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What Trade Risks does Company “B” Face?

- ITAR and DDTC compliance risk
- Product classification risk (dual use)
- Corruption risk in foreign locations
- Deemed Export Risk
- Re-Export and Diversion Risk (destination control statement?)
- FCPA risk from foreign dealers/distributors
- Lack of dedicated compliance staff
- “Cloud” computing risk with servers overseas
- Reliance on manual processes



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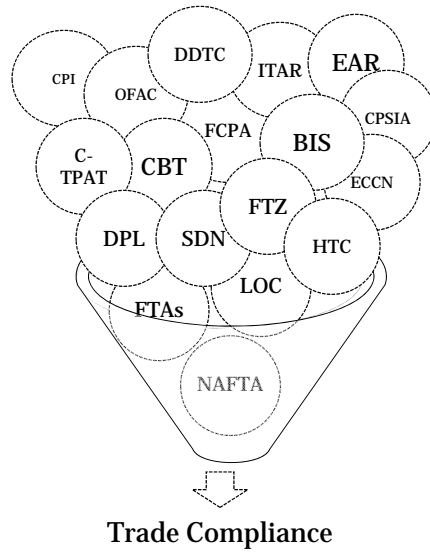
One Size does NOT fit all!



- Each company has different risks and different risk tolerances
- Start with a thorough knowledge of your operations:
 - What product are you exporting? (controlled/uncontrolled?)
 - Where is it being exported to? (Commerce country chart)
 - Who is importing it? (OFAC denied party lists)
 - How will the buyer use your product? (end-use restrictions)
- The answer to each question may “trigger” a different regulatory requirement and may create a different risk

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“Alphabet Soup” of Trade Compliance



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So Many Acronyms!

- DDTC – Department of Defense Trade Controls
- BIS – Business and Industry Security
- CBT – Customs and Border Protection
- EAR – Export Administration Regulations
- ITAR – Int’l Traffic in Arms Regulations
- OFAC – Office of Foreign Assets Control
- SDN – Specially Designated National
- DPL – Denied Party List
- FCPA – Foreign Corrupt Practices Act
- ECCN – Export Control Classification Number
- FTZ – Foreign Trade Zone
- C-TPAT – Customs and Trade Partnership Against Terrorism
- HTC – Harmonized Tariff Code
- FTAs – Free Trade Agreements
- LOCs – Letters of Credit
- CPI – Corruption Perception Index
- NAFTA – North American Free Trade Agreement
- CPSIA – Consumer Product Safety and Integrity Act

Which ones apply to your company?



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Prioritize Your Funnel!



- **Your first step is to conduct a risk assessment**
 - **Scenario Plan** – How does my business operate? What's the worst that could happen? What happens next? Play-out all the possibilities; regulatory, operational, environmental, political. Look for all potential impacts.
 - **Quantify the Risk** – What's the likelihood of a particular scenario actually occurring? What's the magnitude/severity of the risk if it does? What is your company's risk tolerance?
 - **How Can you Mitigate?** – What steps can be taken to immediately limit the negative impact of an event? Are sufficient controls and resources already in place? What else might be needed?
 - **Develop a Plan** – Who is responsible for responding in the event of an incident? What steps will be taken first? Who will report the issue to management?

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Evaluating Risk

1. Identify potential risks
2. Determine how likely each risk is to occur based on "current state" operations
3. Determine magnitude of potential consequences if risk were to occur
4. Categorize risk as being high, moderate or low
5. Develop mitigation and "future state" plans based on risk ranking; devote majority of resources to mitigation of high and moderate risk items

Magnitude of Potential Consequences ↑ High Low	Moderate	High	High
	Low	Moderate	High
	Low	Low	Moderate
	Low		High
	Likelihood of Occurrence →		

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Risk Assessment for Company “A”

- Decentralized structure – how do you keep track of daily operations at 30 locations?
- Consumer Product Safety regulations compliance
- Trade Zone/C-TPAT compliance
- Supply chain integrity risk due to foreign suppliers
- Corruption risk in Mexico
- NAFTA compliance
- E-Commerce compliance (OFAC)
- Deemed Export risk
- New Conflict Minerals Regulations
- Over-reliance on ERP system?

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Challenge: Decentralized Operations

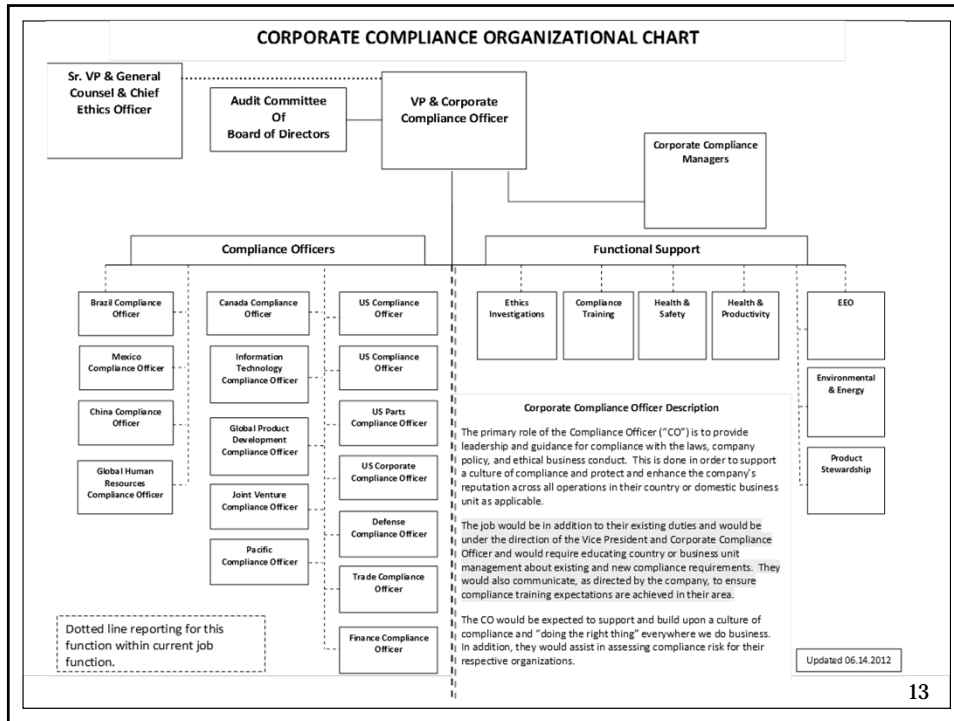
Higher Cost Tactics

- Hire 15 additional full-time compliance employees so each location has a dedicated compliance person
- Send your 15 existing employees out on the road 40-50% of the time to audit/inspect other locations at frequent intervals

Lower Cost Tactics

- “Deputize” strong existing employees to be local compliance monitors or officers
- Coordinate quarterly meetings at a central location for key employees from all locations to discuss compliance

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Challenge: Regulatory Compliance

Higher Cost Tactics

- Retain expert counsel in D.C. to monitor developing legislation
- Travel to every specialized conference you can find addressing each regulation you must comply with to keep up to date

Lower Cost Tactics

- Subscribe to free law firm electronic newsletters and compliance updates
- Get a Twitter account and "follow" some of the key experts in the areas of regulation you are concerned with
- Subscribe to industry and law firm blogs
- Choose one or two "broad reach" conferences where you can obtain updates on multiple areas at once

Sources for Good Blogs and Newsletters

- http://www.avvo.com/stats/top_legal_blogs
 - <http://www.abajournal.com/blawg100/>
 - <http://legalblogs.findlaw.com/top-blogs/>
- 
- The Northrop Grumman Corporation Law Department publishes the Ex/Im Daily Update every day – a great summary of regulatory changes in import and export law.
 - Lexology from the ACC gathers articles from around the web in subject areas you choose and delivers them to your inbox

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Challenge: Supplier Integrity

Higher Cost Tactics

- Retain 3rd party auditor to develop and conduct a comprehensive audit program for your supply chain

Lower Cost Tactics

- Risk –rank your suppliers based on \$ volume and CPI ranking and work with internal audit to conduct audits on your highest risk suppliers
- Require your suppliers to self-certify compliance to a Supplier Code of Conduct and to complete online qualification questionnaire
- Investigate “free” and low cost supplier diligence offerings

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Supplier Diligence Resources

- TRAC offered by TRACE International
 - <http://www.traceinternational.org/Diligence/TRAC.html>
- Due Diligence Dashboard offered by LEXIS
- Comprehensive article on how to establish a supplier qualification process:
 - https://cfo.executiveboard.com/public/documents/CFO_Establishing_Comprehensive_Supplier_Qualification_Processes_Key_Findings.pdf
- Benchmark – what are your key competitors doing? Check out their websites! Google them!

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Challenge: Corruption Risk in Foreign Locations

Higher Cost Tactics

- Retain local counsel in each country to develop customized local training and conduct frequent audits of each foreign location

Lower Cost Tactics

- Risk –rank your foreign operations using the CPI
- Develop in-house training program using “clickers” and conduct annual training at high risk locations
- Develop an in-house newsletter highlighting real case-studies and acknowledging employees who raise their hands
- Develop an internal FCPA audit program with your internal auditors and train audit team to recognize corruption red flags

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Anti-Corruption Resources

- **Transparency International**
 - <http://www.transparency.org/>
- **Organization for Economic Cooperation and Development (OECD)**
 - <http://www.oecd.org/corruption/>
- **U.S. Department of Justice**
 - <http://www.justice.gov/criminal/fraud/fcpa/>
 - ✦ Find FCPA Opinion Releases here!
- <http://www.fcpablog.com/>
- <http://www.fcpaprofessor.com/>

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Challenge: Conflict Minerals Regulations

Higher Cost Tactics

- Retain one of the big “alphabet” consulting firms out of D.C. to prepare a summary of the new legislation and develop and implement a plan to bring your company into timely compliance

Lower Cost Tactics

- Join an industry-specific task force working on compliance
- Sign-up for free electronic newsletters from law firms working in this area
- Benchmark with other companies to see what they are doing and model your program accordingly

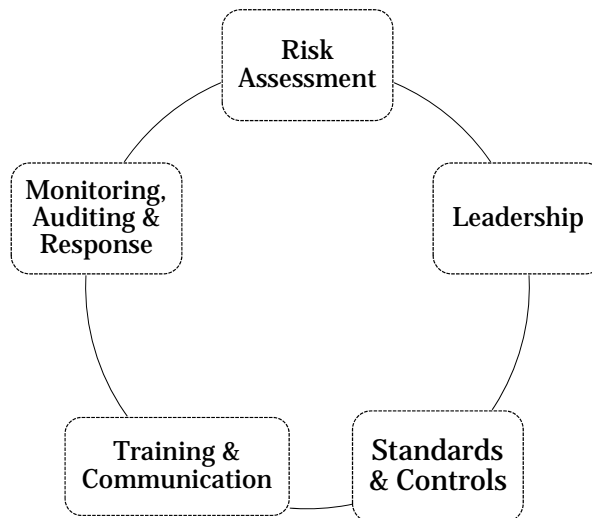
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Conflict Minerals Compliance Information

- **GeSI and EICC initiative:**
 - <http://www.gesi.org/Media/GeSINewsFullStory/tabid/85/smid/503/ArticleID/84/reftab/37/Default.aspx>
- **Automotive Industry Action Group:**
 - <http://www.aiag.org/staticcontent/committees/workgroup.cfm?FC=CR&grp=WCOC&group=CMWG>
- **The Enough Project:**
 - <http://www.enoughproject.org/files/ConflictMineralsJournalistResources.pdf>

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Key Elements to any Compliance Program



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OECD's 13 Good Practices on Internal Controls, Ethics, and Compliance

- Risk assessment as basis for effective internal controls and compliance program
- Policy that clearly and visibly states what is prohibited and required
- Training – periodic, documented
- Auditing, Monitoring – individuals at all levels should be responsible for ongoing monitoring activities
- Senior Management Support– strong, explicit and visible
- Oversight by senior corporate officers with sufficient resources, authority, and access to Board
- Specific risk areas – promulgation and implementation of programs to address key issues
- Business partners due diligence including RPL screening
- Accounting and Recordkeeping – effective internal controls for accurate books and records
- Guidance – provision of advice and counseling to ensure compliance
- Reporting violations confidentially with no retaliation
- Discipline for violations of policy
- Re-assessment – regular review and necessary revisions

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Nine Key Elements of an Effective Export Compliance Program

- (1) Management Commitment
- (2) Continuous Risk Assessment
- (3) Written Operational Guidelines
- (4) Ongoing Compliance Training & Awareness
- (5) Cradle to Grave Export Compliance Security including list screening
- (6) Recordkeeping [EAR Part 762]
- (7) Export Compliance Monitoring & Auditing
- (8) Program for Handling & Reporting Export Compliance Problems & Violations
- (9) Follow-Through and Corrective Action



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Specific Areas You Should Address

- OFAC Screening of vendors, customers, third party service providers, consultants, visitors
- Anti-Boycott compliance and reporting
- FCPA diligence and audit
- Product classification
- Deemed Exports
- Diversion risk and red flags
- License decrementing, tracking of provisos and deadlines
- Self-audit and self-disclosure



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Export Compliance Programs Advanced Components

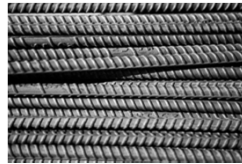
- Export compliance website
- Export compliance newsletter or publication
- Compliance hotline
- Training videos
- Interactive training software with records of user activity
- Automated list tracking
- Automated recordkeeping



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Recent Enforcement Example

- Global Metcorp
- Sale of approximately \$280k of scrap steel to People Steel Mill in Pakistan
- People Steel Mill is on the entity list maintained by BIS
- Fined just shy of 20% of the value of the shipment
- Mandatory Export Compliance Training for Global Metcorp's CEO.



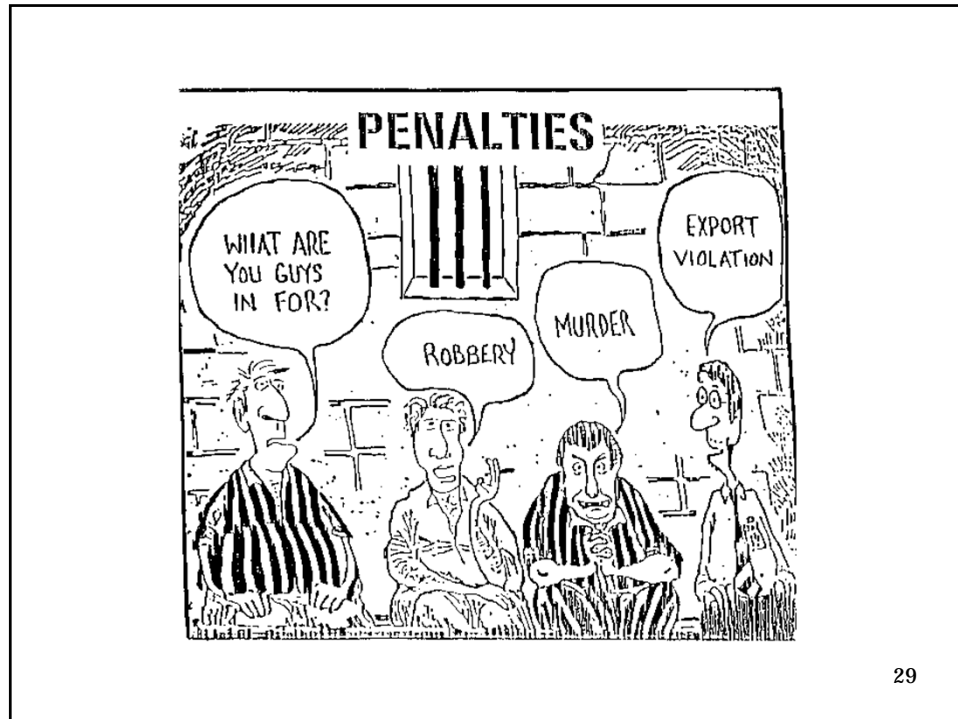
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Criminal Charges Also Possible

- An Illinois attorney was recently disbarred due to his criminal conviction for smuggling boxes of Cuban cigars across the border from Canada in the trunk of his car.
- He did so repeatedly, as many as 46 boxes at a time
- He was reported by his wife during bitter divorce case
- As part of conviction, seized his home arguing proceeds from sales of the illegal cigars were used to pay the mortgage on the house!



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Helpful Resources for Development of Export Compliance Programs

- http://www.bis.doc.gov/complianceand enforcement/emcp_audit.pdf
 - Department of Commerce self-audit checklist
- http://www.bis.doc.gov/complianceand enforcement/emcp_guidelines.pdf
 - Department of Commerce compliance policy guidelines
- <http://www.ncitd.org/members/internalcontrol.htm>
 - Industry group sample format for a compliance policy
- http://export.gov/basicguide/eg_main_017244.asp
 - U.S. Commercial Service basic guide to exporting
- http://export.gov/illinois/exportersresource/eg_us_il_025454.asp
 - Library of resources and educational materials on export compliance from the U.S. Commercial Service

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Questions?

- Feel free to contact me with any questions you may have:

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