Issue 8. NOVEMBER 2020

Export Compliance Manager

In the spotlight

Lessons from companies under consent agreement

Overseas distribution engagements: the key considerations

EU GEAs – what they are and how to benefit from them

The importance of enhanced due diligence during Covid-19

Auditing in a remote world: the challenges and the solutions

Turn and face the strain...

What a week. What a month. Is it the end of the year yet? Maybe it's the end of an era? I find I'm more focused on the end of the year this year than in previous years – and there are still seven weeks to go.

We talk a lot about change and 2020 has seen more than most years. At home. In the office. In the home office... The overarching theme this year has been disruption driving change. That trend has continued with the US election resulting – most likely – in a change of administration, which might mean further change. Will Joe Biden row back on Donald Trump's trade policy initiatives in the way that Trump rowed back on Obama's? Perhaps. Perhaps not. The jury is, naturally, still out. But be sure of one thing, whatever happens, whatever the direction, trade compliance will be busy responding and ensuring their organizations remain fit for business and the challenge.

The majority of articles in this issue of *ECM*, unsurprisingly then, deal with change – changes in perspective, changing regulations, a change to your business, changing third-party distributors... change begets change.

The Ultimate Stress Test feature considers the impact of a year of disruption on internal compliance programs. Surely they were not created, considered and signed off with all that 2020 brought in mind? Faced with a pandemic of coronavirus and sanctions activity, did your ICP come through with flying colors? Or did this annus horribilis illustrate perfectly the need for review? We consider the various risks ICPs have had to address and whether they are fit for purpose in the new normal of 2021. After all, that's a big ask.

> Faced with a pandemic of coronavirus and sanctions activity, did your ICP come through with flying colors?

Equally driving and responding to change, technology is very much in our minds in 2020. In our technology primer this issue, Heather Noggle considers the alchemist's steps to be taken when changing data into knowledge, so enhancing the compliance function's capabilities. Change for the better again.

Supply chains are at the heart of the news again. (How will the world shift millions of vaccines at minus 80 degrees? By Amazon alone?) Moving supply chains, securing supply chains, third parties in supply chains. This is a topic close to *ECM*'s heart, and this issue we add to our collective supply chain knowledge with articles on shoring up end-user due diligence in the midst of a pandemic, good practice in choosing an overseas distributor, and how to confidently set about a remote audit.

This issue, we also made a change ourselves. For a change, we invited a law firm to share a week in their life. Thank you, Page Fura, it's a valuable and entertaining insight into how private practise lives.

Can we get through the next seven weeks without too much change? Let me know what challenges you've faced in 2020 and how you've overcome them. I'm keen to hear how you have innovated, survived and, naturally, changed.

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New EU dual-use controls

The EU has reached a provisional political agreement on a revised regulation setting out the EU regime for the control of exports, brokering, technical assistance, transit, and transfer of dual-use items. The proposed new rules should allow for "more accountable, competitive and transparent trade of dual-use items". Changes will include controls on cyber-surveillance

technology and the export of cyber-surveillance items and new general export authorisations for the export of cryptographic items and intra-group technology transfers under certain circumstances. The new regime, it is hoped, will improve cooperation between EU Member States on the export of dual-use items.

BIS offers license extension

The US Department of Commerce's Bureau of Industry and Security ("BIS") is to allow exporters to request six-month validity period extensions for licenses due to expire on or before 31 December. Acting Under Secretary for Industry and Security, Cordell Hull, said: "President Trump and the Department of Commerce are committed to cutting red tape and making it easier for exporters to drive our Nation's economic recovery in the wake of the pandemic."

Chinese man faces US jail

A 50 year-old man from Nanjing, China, faces a maximum jail term of 15 years, having "pleaded guilty to conspiring to submit false export information through the federal government's Automated Export System and to fraudulently export to China maritime raiding craft and engines, and attempting to fraudulently export that equipment in violation of U.S. law," the US Department of Justice has said.

Artworks in the sanctions picture

OFAC has issued an a "Advisory and Guidance on Potential Sanctions Risks Arising from Dealings in High-Value Artwork". The advisory aims to draw attention to the use of art works in gaining access to the US financial system by Specially Designated Nationals and Blocked Persons. The advisory details examples of sanctioned Russian oligarchs and North Korean individuals using the art market for this purpose.

Emerging tech new rule proposed

In a proposed rule published 6 November, BIS says that "Certain items that could be of potential concern for export control purposes are not yet listed on the CCL (Commerce Control List) or controlled multilaterally, because they represent emerging technologies. Among these items is 'software' for the operation of nucleic acid assemblers and synthesizers controlled under Export Control Classification Number (ECCN) 2B352 that is capable of designing and building functional genetic elements from digital sequence data... The absence of export controls on this 'software' could be exploited for biological weapons purposes. In an effort to address this concern, this rule proposes to amend the CCL by adding a new ECCN 2D352 to control such 'software'." BIS invites comments on the new rule.

ICC receives further support

72 countries have reiterated their ongoing support for the International Criminal Court ("ICC"): "As States Parties to the Rome Statute of the International Criminal Court, we reconfirm our unwavering support for the Court as an independent and impartial judicial institution." In June, US President Donald Trump issued an executive order which mandated the imposition of sanctions against ICC officials investigating allegations of war crimes committed by US troops in Afghanistan.

BIS amends China watchlist

Between 30 October and 2 November, BIS added 29 names and removed 40 from its export watchlists, including several major Chinese companies and universities. Additions to the list include Sun Yat-Sen University, a major research university in Guangzhou, China. Parties removed include two major Chinese universities, Xi'an Jiaotong University and Shanghai Institute of Applied Physics Chinese Academy of Sciences, as well as Runtop Circuits Technology Co., a general trading company in Hong Kong.

Election interference

OFAC has designated five Iranian entities for allegedly attempting to influence elections in the United States. They include: the Islamic Revolutionary Guard Corps, the IRGC-Qods Force, and Bayan Rasaneh Gostar Institute (pursuant to Executive Order (E.O.) 13848 "for having directly or indirectly engaged in, sponsored, concealed, or otherwise been complicit in foreign interference in the 2020 U.S. presidential election."

Europe targets human rights

The European Commission and the High Representative of the EU for Foreign Affairs and Security Policy have put forward a joint proposal for a Council Regulation concerning implementation of sanctions against serious human rights violations and abuses worldwide. The joint proposal for a Council Regulation will, once adopted by the Council, become the EU Global Human Rights Sanctions Regime, which is expected to become law in early 2021.

OFAC looks to the Middle East

OFAC has added Lebanese politician Gibran Bassil to its Specially Designated Nationals and Blocked Persons ("SDN") List for his alleged participation in corrupt acts in Lebanon. Bassil has been the President of the Free Patriotic Movement political party.

Additionally, OFAC took action against Syrian military officials, members of the Syrian Parliament, government of Syria entities, and Syrian and Lebanese persons by adding seven individuals and 10 entities to the SDN List. The sanctions focus on individuals and entities that provide support to the Bashar al-Assad regime's oil production network. The action is Treasury's fifth round of Syria-related actions since the provisions of the Caesar Syria Civilian Protection Act of 2019 (Caesar Act) came into full effect.

Trading places

Our best wishes go to **Hershel Tamboli** who has moved to become Export Control Analyst at Emory University. Hershel, a contributor to *Export Compliance Manager*, joins from Deloitte.

In California, **Liz Benitez** has joined Advantech as Compliance Specialist. Liz joins from trade law firm Minutillo Law. Meanwhile, in Illinois, **Matilda Vazquez** takes on the position of Export Compliance Manager at supply chain specialists Mohawk Global. Matilda joins from Merit Trade Consulting Services where she was VP.

In Copenhagen, Denmark, **Angelika Flamm** has become Ethics and Compliance Advisor at UNOPS: "UNOPS helps the UN and its partners provide peace and security, humanitarian and development solutions." Angelika was formerly Group Compliance Director at Royal Mail in London, England.

Staying in Europe, in England, this summer **Jo Nettleton** became Senior Director Global Trade Compliance at global aviation and aerospace company, Meggitt. Jo was previously Vice President of Compliance. And in Germany, **Serkan Deniz** joined Schenck Process as Global Head of Export Control and Customs. Serkan was previously Compliance Manager at DB Cargo and prior to that a lawyer at trade law specialists Hohmann Rechtsanwalte.

Back to the US, where **Jennifer Cirrone** has become Head of Global Trade Compliance at Bose Corporation – Jennifer is promoted from Customs & Trade Compliance Manager; **Erin McDonough** takes on the role of Global Trade Operations and Customs Manager, Military Engines at Pratt & Whitney; and **Brooke Matthys** has joined J.K. Baker Group as US Export Compliance Specialist. Brooke was previously at logistics experts C.H. Robinson.

Trading places? Let us know. email info@exportcompliancemanager.com with news of your move

What to expect from a Biden administration?

ECM readers tracking the US election, and possibly exhausted from frequent new designations and the US-China trade war, will be interested in what the winners of the election might have planned for trade. On the Biden campaign website, the emphasis is on four key trade areas:

- Pursuing a Pro-American Worker Tax and Trade Strategy
- Bringing back critical supply chains to the US (from China)
- Working with allies to modernize international trade rules
- Increasing government procurement of Buy American

While Biden is likely to reinstate some Obama-era initiatives, such as the JCPOA (aka "the Iran nuclear deal"), it is believed that the new administration will continue to use sanctions as a preferred trade tool, but with an orientation more focused on ethical issues. "I would expect a continuation of the use of sanctions to advance human rights," notes Jason Rhoades, Senior Manager, Sanctions Compliance at KPMG. "Though perhaps not as much unilaterally and as confrontationally as is being done now. I would expect a more nuanced approach to such sanctions."

The Biden/Harris administration may take a fresh look at sanctions.

Also, likely are a rolling back of Cuba sanctions, but a tougher stance on both Russia and China. Melissa Duffy, a Partner at the DC office of law firm Dechert, told *ECM*: "President-Elect Biden has indicated he will continue a strong stance towards China. He might pivot away from the Trump Administration's broad use of tariffs, while turning towards sanctions and other trade controls to combat human rights abuses in Xinjiang, the undermining of Hong Kong democracy/autonomy, and national security concerns surrounding emerging technologies.

"On Cuba, we expect a Biden Administration to return to the more open relationship fostered under former President Obama. President Trump has been ratcheting up sanctions, through the reversal of executive actions taken by the prior Administration, which could be just as easily reversed again. Because Cuba sanctions have been heavily legislated, any major change will require Congressional action, which is unlikely if the Senate remains Republican controlled."

On Iran, however, Duffy suggests: "[I]mmediate [reversal] action may not be feasible, as it would require rebuilding a multilateral coalition with the United States and bringing Iran back to the negotiating table."

EU to add UK to list of EU001 countries

The European Union has published a proposal for an amendment to the EU dual-use export control regime (428/2009) which would "grant a Union General Export Authorization for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland."

The specifics of the proposal are that the UK would be added to Annex IIa of Union General Export Authorization (EU001) "for certain low-risk transactions, e.g. exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland (incl. Liechtenstein), and the United States of America."

This would mean that exporters to the UK from the European Union would not be required to obtain a license prior to the export of the items covered.

An explanatory memorandum reads: 'The withdrawal of the United Kingdom from the Union affects the trade of dual-use items between the EU and the United Kingdom: according to Council Regulation (EC) No 428/2009, the export of dual-use items from the EU to the United Kingdom will require, as of 1 January 2021, an export authorization issued by the competent national authority of the Member State where the exporter is established. This would create considerable administrative burden for competent authorities of the [Member State] and for EU's exporters, affecting their competitiveness.

General export authorization will allow easier exports from the EU to UK.

"Therefore, in order to mitigate these risks and the impact of the withdrawal of the UK [on] the EU's competitiveness, it is appropriate to add the United Kingdom to Annex IIa of the Regulation and therefore control exports to the UK under the Union General Export Authorization EU001."

It continues: "There are a number or reasons why the United Kingdom should be added to the list of countries included in the EU001:

- The United Kingdom is a party to relevant international treaties and a member of international non-proliferation regimes and maintains full compliance with related obligations and commitments;
- The United Kingdom applies proportionate and adequate controls effectively addressing considerations about intended end use and the risk of diversion consistent with the provisions and objectives of this Regulation.

"Therefore, adding the United Kingdom to the list of countries included in the EU001, will not negatively affect EU and international security, while ensuring a uniform and consistent application of controls throughout the EU and providing a level playing field for EU exporters."

BIS amends national security license review policy for China, Venezuela and Russia

The US Department of Commerce's Bureau of Industry and Security ("BIS") has issued a final rule amending Section 742.4(b)(7) of the Export Administration Regulations ("EAR") and which revises the license review policy for items controlled for national security reasons ("NS items") destined for the People's Republic of China, Venezuela and Russia.

BIS will from now on review all NS item applications involving those countries to determine the risk of diversion to a "military end user" or for a "military end use". Exports, reexports and transfers of NS items destined for civil end-users and civil end uses are now subject to a presumption of approval, while BIS will apply a presumption of denial when reviewing applications for exports, reexports or transfers of NS items that will make a "material contribution" to the "development, production, maintenance, repair, or operation" of weapon systems, subsystems and assemblies in those three countries.

Venezuela is among the countries listed for licensing reviews.

In June, BIS updated Section 744.21 of the EAR to significantly expand the EAR's definition of "military end use" and also prohibited exports, reexports and in-country transfers of specified items to China, Russia or Venezuela when those items will be used by "military end users" or for a "military end use".

China: US arms sales to Taiwan must end

Undisclosed sanctions imposed by China against defense companies Boeing, Lockheed Martin and Raytheon in retaliation for the approval of a $1.8bn deal to sell weapons to Taiwan could be an indicator of how China will use its new export control law to exert foreign policy influence, experts say.

On 26 October, China's Ministry of Foreign Affairs said: "The U.S. arms sales to Taiwan severely violate the one-China principle and the three China-U.S. joint communiqués, and seriously undermine China's sovereignty and security interests. China firmly opposes and strongly condemns it…Once again we urge the United States to strictly observe the one-China principle and the three China-U.S. joint communiqués, and stop selling weapons to Taiwan or having any military ties with it. We will continue taking necessary measures to safeguard national sovereignty and security interests."

China has announced sanctions on defense companies Boeing, Lockheed Martin and Raytheon.

The announcement is in keeping with the tenor of the new law, which came into effect on 1 October and Article 48 of which holds: "Where any country or region abuses export control measures to endanger the national security and national interests of the People's Republic of China, the People's Republic of China may, based on the actual situation, take reciprocal measures against that country or region."

Shanghai-based lawyer Yi Wang comented that the sanctions reflected the "vast ideological divergence on issues relating to Hong Kong/Taiwan where China stresses 'national unity' as essential national security," and that, going forward, there would be inevitable "conflicts" between China's "evolving sanction regime" and US interests which "must be closely monitored and responded to".

Wang said: "To safeguard assets and individuals within China and impacted non-Chinese operations/business [during the current period of regulatory uncertainty] businesses must proactively conduct internal due diligence, on both operations and corporate structures, and encourage self-reporting within the organization to map, identify and halt any risks violating [export control laws] and China's evolving sanction regime," adding that "businesses and industrial concerns must actively engage with MOFCOM's rule-making process to ensure their interests and level the playing fields."

New tool throws light on EU arms export licenses

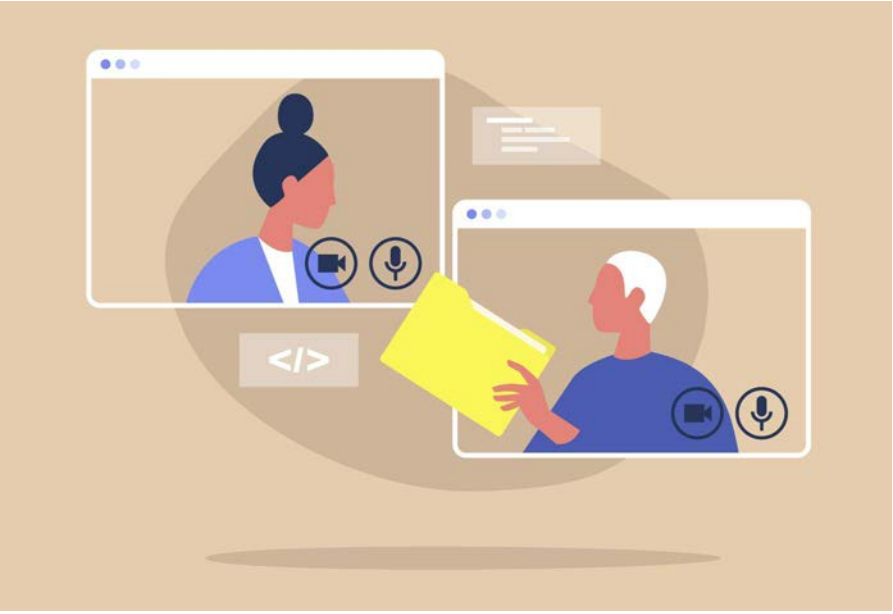
The External Action Service of the European Union ("EEAS") has launched an online database which, it says, "will allow everyone to consult and analyse the data on [EU] Member States' arms exports in a user-friendly manner". It says that the database "contains information on the value, destination and type of arms export licenses and actual exports from Member States, covering the years 2013-2019. The database will be updated on an annual basis."

To improve transparency, it says, "[T]he new database offers various graphic representations to all those interested in the value, military equipment and destination of European arms exports."

It adds, "Military weapons have an indispensable role in the preservation of security, freedom and peace, provided they are used in accordance with International Law, including Human Rights Law and International Humanitarian Law.

"At the same time, weapons of war are by definition capable of inflicting death and destruction.... Accountability for arms export decisions can only take place when authorities are transparent."

See the database at https://webgate.ec.europa.eu/eeasqap/sense/app/75fd8e6e-68ac-42dd-a078-f616633118bb/sheet/24ca368f-a36e-4cdb-94c6-00596b50c5ba/state/analysis



KPMG SMART PRACTICE

Auditing in a remote world: the challenges and the solutions

2020 has been a year of unforeseen challenges but also one of innovation and adaptability. Among other things, export compliance professionals learned how to manage complex new regulations and global developments so that business could continue. As 2021 approaches, many companies plan to keep their workforces remote. One area of particular challenge in this new working environment is conducting remote audits. Auditing is a critical function for an export controls compliance program that should not be deferred; fortunately, many of these challenges can be managed with out-of-the-box solutions.

Gathering background information

Audits have a ramp-up period in which the team gathers the information that will help drive the assessment. This usually requires understanding people's functions and their touchpoints with export compliance. In a remote environment, it can be difficult to understand day-to-day responsibilities, making it challenging to determine where information requests should be directed. Automated surveys that ask people to detail their roles and responsibilities will help ensure the right stakeholders are targeted for interviews, and can also be helpful in identifying risk areas. With the right focus and questions, automated surveys facilitate a streamlined audit by providing a high-level overview of the enterprise's business processes.

Managing transactional testing documentation

A critical part of any audit is transactional testing, which may result in copious amounts of documentation. In a remote environment, simply managing the influx of files can be challenging, especially if individual team members are storing files on their computers. The testing process will be smoother if a central site or folder is established for the documentation. There should be a clear organizational system and naming convention to reduce confusion. Where possible, one person should be the central point of contact for receiving and organizing documents and for collating and issuing document or information requests. Similarly, testing logs should also be centrally maintained to eliminate version control issues. Taking the time to implement procedures at the start of the audit will create efficiencies as the audit progresses.

Conducting site tours

Understanding a facility's physical layout is part of a well-run audit. In a virtual world, it would seem site tours are off the table. But that doesn't have to be the case. Recording a walk-through of the facility can provide valuable insight, especially when accompanied by explanations from knowledgeable team members, helping the audit team understand the export compliance picture.

Validating system functionality

Increasingly, managing export compliance requires integrated systems and automation. But if they are not properly configured then a company's compliance profile may be impacted. It may appear impossible to assess functionality in a world where everyone works remotely, but over-the-shoulder reviews can be very successful. The user simply shares their screen while the auditor asks them to perform different compliance functions, such as license management. These over-the-shoulder reviews also facilitate open conversations about system functionality and informal work-arounds that have been developed that may impact compliance.

Assessing culture

Being on site allows export compliance professionals to assess the intangibles that can make or break an export compliance program. Through casual interactions and more formal meetings, the audit team can assess how export compliance is treated within the organization. They also acquire greater understanding into whether the team members are integrated or siloed, how they communicate and the overall team dynamic. In a virtual environment it can be more difficult to make these assessments, but they are so critical to a program that it is worth the effort. Conducting one-on-one meetings can provide valuable insight, as people may be more willing to speak candidly in a private conversation. Additionally, inviting them to provide their opinions about the compliance structure can result in useful insight about potential improvements or unaddressed risks.

Undoubtedly, remote working conditions present challenges in conducting audits. However, by implementing processes to remain organized, and integrating technology into the review, it can be as successful as a traditional audit. ■

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STEPTOE OUTSIDE COUNSEL

EU GEAs – what they are and how to benefit from them

General export authorizations ("GEAs") are authorizations for exports to certain countries available to all exporters who meet their conditions and abide by their requirements. They may be issued by the EU ("Union General Export Authorizations") or the Member States ("National General Export Authorizations"). The EU has adopted six GEAs, set out in Annexes IIa to IIf to the EU Dual-Use Regulation:

- **EU001**: Covers most exports of items listed in Annex I to the Dual-Use Regulation ("Annex I") to Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein) and the United States of America.
- **EU002**: Covers exports of certain dual-use items to Argentina, Croatia, Iceland, South Africa, South Korea and Turkey.
- **EU003**: Covers most Annex I exports following their repair/replacement, where the relevant items were initially exported from the EU under a valid license and were being re-imported into the EU for the purpose of maintenance, repair or replacement. It authorizes exports to 24 destinations.
- **EU004**: Covers temporary exports for exhibitions or fairs to 24 destinations.
- **EU005**: Covers exports of certain items listed under category 5 part 1 of Annex I to nine destinations.
- **EU006**: Covers exports of certain chemicals specified in Annex I to Argentina, Croatia, Iceland, South Korea, Turkey, and Ukraine.

Each of the EU GEAs provides:

- A precise list of destinations to which exports are permitted;
- A specific list of items that may be exported to those destinations;
- A specific set of conditions of use, which must be complied with under the particular general authorization.

EU GEAs are granted *ex officio* and provide unique licensing coverage in all the Member States without the need to file a license application at national level. However, the competent authorities of the Member State where the exporter is established may prohibit the exporter from using these authorizations if there is reasonable suspicion about their ability to comply with them or with the export control legislation. Moreover, Member States may require the exporter to register prior to the first use of the respective EU GEA. It is crucial that exporters meet all the requirements in connection with the use of an EU GEA, as failure to do so would result in an unauthorized export.

Brexit

GEAs have also been used to avoid disruption arising from Brexit. In March 2019, the EU adopted Regulation (EU) 2019/496 amending the EU Dual-Use Regulation, by which it adds the UK to the list of destinations covered by EU general export authorization EU001. This Regulation will only apply in the case of a no-deal Brexit. The UK in turn adopted an open general export license ("OGEL"), which covers exports of dual-use items listed on Annex I to any Member State as well as to the Channel Islands. Like the EU GEA, this OGEL provides for a number of exclusions and requirements. It will apply from 31 December 2020.

Review of the EU Dual-Use Regulation

In the context of the ongoing review of the EU Dual-Use Regulation, the Commission proposed new EU GEAs covering encryption, intra-company transmission of software and technology, low-value shipments, as well as "other dual-use items" on an ad-hoc, as-needed basis. While the Council supported plans for EU GEAs on encryption and intra-company transmission, it opposed those on low-value shipments and "other dual-use items". Consequently, the revised EU Dual-Use Regulation will not introduce the latter two EU GEAs.

Benefits for exporters and authorities

The benefits of a specific EU GEA for a company depend on the type and trading patterns of the dual-use products to be exported. Facilitated export procedures eliminating the need for individual licenses are most favored in the context of frequent exports to the same customer or country of destination. Such benefits will outweigh the more onerous record-requirements and notification procedures that an EU GEA normally entails. Likewise, an EU GEA will entitle companies and authorities alike to focus on the more potentially sensitive destinations and products.

EU GEAs are critical to creating a level playing field for EU exporters both in comparison with similar obligations in third countries and internally within the EU. They contribute to the competitiveness of EU exporters on global markets. ■

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Export compliance for your PLM system: Are you checking all the boxes?

Is export control compliance integrated into your product lifecycle management ("PLM") systems? As many companies move towards digital transformation and centralize engineering systems, this is the time to embed data-management processes and controls by leveraging the latest in technology solutions to manage trade compliance requirements. Here, Deloitte highlights some considerations for managing export control compliance within unified PLM systems.

For many organizations, their PLM system is a critical element of a digital transformation initiative and serves as a pillar to improve engineering efficiencies and product innovation. Further, we now see many global organizations modernizing and unifying their PLM approach, the benefits of which can include a single-source view of product and manufacturing data that supports global collaboration both internally and externally. This approach presents potential opportunities and challenges for export control compliance.

A focus on rapid product delivery, business continuity, and keeping costs down often leaves export compliance in a silo or as an after-thought in PLM technology enablement. Companies working with emerging technologies and export-controlled data cannot achieve business needs without meeting regulatory requirements, but typically these requirements are seen as a hindrance to deliver one PLM solution across a global enterprise. Export compliance professionals grapple with administering the complex and strict regulatory requirements for the business while also supporting an agile and swift product development process.

The reality is that export compliance can be a facilitator instead of an impediment when properly embedded in a PLM system. Considering export requirements early in the design can allow business stakeholders – global R&D functions, partners, contractors, suppliers, customers, subsidiaries, and joint ventures – to share sensitive or export-controlled data in a secure and collaborative environment.

If your organization is planning to undergo or is in the process of implementing PLM improvements or digital transformation, here are some considerations on how you can prepare to make export controls an integral part of those initiatives:

Integrate classification into the PLM

Engineers and compliance personnel can leverage and record compliance information as early as possible in the product development process to enhance efficiencies. Some compliance information for customs and partner government agencies should be timed for inclusion in necessary workflows at points and times that make sense for product development lifecycles.

Lean processes and tools to manage export control requirements

Internal controls including early and continuous classification, tagging, marking and access controls can be built into PLM processes and systems tools in order to enhance the value of the solution while still maintaining compliance with applicable regulations

Mapping technology flows/systems and managing associated risks

Up-front analysis of proposed organizational structure and PLM-related activity/systems to identify potential export control requirements and cross-border activities can be used to develop an export control management strategy to support compliant future state product development.

Data management and readiness

Many data systems do not have requisite trade data elements and lack mature controls for managing, storing and sharing controlled data, including emerging technology; and manual processes may be inconsistent and unreliable. Through data-management and readiness exercises, legacy data can be managed to enable compliant migration in accordance with project deadlines and support future state internal controls in order to facilitate compliance. Effective data management, data readiness and cleansing, and data hosting and strategy for PLM systems can form part of user access control frameworks and enable Technology Control Plans.

In summary, export controls (and other regulations relating to storage and sharing of data) should not be addressed as an afterthought, or they risk undermining the business case for PLM system implementations and broader digital transformations. Companies can leverage the full range of automation opportunities within PLMs to assess, monitor and respond to a wide range of export control compliance requirements.

Whether it is in cloud service models (public or private), or hybrid cloud, a modern PLM solution can be paired with regulatory standards such as the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). The potential benefits of embedding export controls go beyond decreasing time to market and driving efficiencies to disrupting the silos, promoting collaboration, providing visibility and preserving compliance at each and every step. ■

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The ultimate stress test

2020. Annus horribilis. Compliance practitioners have had to deal with hitherto unimagined challenges. Now, as we move toward 2021, the question we are asking is, "Can your ICP cope?"

Guidance on internal compliance programs ("ICPs") from both the European Union and the United States (as well as from experts in the field) recommends trade compliance managers do not view their ICP as a static, stagnant set of policies to be put on a shelf and dusted off every few years to see if it is still applicable. In fact, it is strongly recommended that ICPs are regularly reviewed, tested and revised to make sure it remains relevant to the business.

You may test your program on a rolling basis or annually, but have you ever done a full-on stress test? If not, consider these questions you can use in a tabletop exercise:

Q: How would the elements of the ICP hold up if staff in the headquarters were required to work remotely for between three and six months in a year?

Q: How would it hold up if offices in multiple countries had to work remotely for three to six months due to a government mandate?

Q: What would happen to your screening capabilities if multiple ports around the world were closed for business for a few weeks?

Q: What if borders were closed and the team could not travel to perform audits or training in high-risk/locked-down countries?

Q: What if the company experienced a financial impact that required ongoing furloughs of staff in all departments, would transactions-screening processes hold fast?

Q: How would the supplier due diligence hold up if new sanctions and new SDNs were declared every month for the next six months? What about every week?

Q: If all of the above happened, would your team have time to process the findings of audits and transaction reports, conduct root cause analysis and implement a correction of errors process – and roll all of the above into the risk assessment as new occurrences?

Sounds familiar? If your team came through all of that with flying colors, then congratulations! You can stop reading now. After all, you have likely taken to heart guidance from the Wassenaar Arrangement's best practices for ICPs, which recommends regular performance reviews to ensure the ICP is "operating appropriately" and "relevant".

Chances are, though, there were one or two challenges listed that your ICP may not have envisaged. As we come closer to the end of this year of unparalleled disruption, *ECM* spoke with trade compliance professionals to understand how they would recommend assessing a compliance program today and what they think tomorrow's (2021) version might look like.

Assessing the disruption

New sanctions designations and changes to supply chains, the result of Covid-19 disruption, may have served to increase the profile of trade compliance, and the team, in the organization. Indeed, trade teams can make good use of the challenges and extra attention to gain support updates and enhancements to the trade compliance framework that may have been a hard sell in the past. "The disruptions of the past year may be an

opportunity to prove the business case for a more sophisticated compliance program," says Pablo LeCour, Principal in Deloitte's Global Trade Practice, "and the involvement of trade compliance in strategic decision making."

Trade teams seeking to input into strategic decision making will want to review the company's risk profile and determine which of the controls in place worked, which didn't, and which new areas of risk have arisen. As a first step in assessing the impact of the various challenges to your ICP, Becky Urbanek of Delaware's Urbanek Compliance Consulting suggests, "Try to discern the difference between the successful and less successful controls and use that knowledge to ensure controls, particularly those for the highest risks, can support an ever-changing business."

In certain industries, new risks that have materialised could have industry-wide impact; be aware of those as well as any which are specific to your own organization. New risks could apply to certain products or locations, thanks to the increased rollout of sanctions or other regulations during the pandemic. "In terms of focal areas for assessment, compliance departments should consider formally assessing risks related to emerging technologies and forced labor, as well as the adequacy of end-user and end-use due diligence practices given the increased regulatory scrutiny," advises LeCour.

The resources available to the compliance team and the organization's overall compliance culture might need a second look, too. With the pandemic making most in-person audits impossible, teams adapted quickly to implement a virtual audit protocol. This is just one of the many shocks to the system that have required teams to be resilient and adaptable.

When considering compliance culture, UK trade lawyer Lauren Murton of International Trade Law Limited suggests that compliance officers need to consider whether they are still able to keep their fingers on the pulse of the business remotely. She encourages trade compliance managers to ask themselves, "Are your colleagues still seeking your advice ahead of new high-risk business opportunities?" For those who find they might have lost track of the flow of business, Murton says there are a number of key areas to assess as a first step to getting back on track:

- Country risks: Due to changes in sanctions, trade restrictions and export legislation, your country risk map may need updating to reflect upgrades or downgrades in risk levels for certain countries.
- Third-party risks: The US, UN, EU, and many individual countries have added to their lists of sanctioned parties in 2020. Check your screening processes and tools to ensure new third-party risks have been accounted for.
- Product risk: Trade compliance managers should consider updating their export classification libraries from suppliers and internally based on new products being developed.

Added to these, Urbanek says she's looking at certain more subtle risks, such as where there have been increased pressure to meet business goals, perhaps causing compliance corners to be cut.

Another high-level assessment to consider is to review how risk tolerance in your company might have changed. Certain business units may be emboldened in their risk appetite by an environment that they perceive as full of opportunity, while others might have become more conservative, shying away from historical and pre-set tolerance levels. Understanding the company's risk tolerance levels is essential in ensuring that the ICP is fit for purpose. As Urbanek notes, "Even if the overall risks have not changed considerably, the ranking and net risk levels may have, thus requiring a refocus of compliance efforts."

Don't forget to look at the ICP in the round. Refocusing of effort means taking a look at all areas of the ICP. This year, trade compliance teams will have, necessarily, been focused on the stand-out challenges we have mentioned. Consequently, attention to lower-risk – but nevertheless important – issues may have been put aside for a few months, and now would be the time to re-assess those.

> "The disruptions of the past year may be an opportunity to prove the business case for a more sophisticated compliance program and the involvement of trade compliance in strategic decision making."

Bruce Kutz is Head of Classification at Nokia Trade Management. He says that although the changes this year have helped his team recalibrate their program and finesse the company's quick reaction to compliance changes, for him, the disruption highlighted the significance of training and communications. "Ensuring we have the right level and frequency of communication to various parts of our business was an important element," he

5 risks to have on your radar

1. Continued navigation of Covid-19 pandemic
Anticipate what is difficult to anticipate, like further workforce and supply chain disruptions, competition for raw materials that have become scarce due to supply chain disruption.

2. Geopolitical risks
Brexit challenges related to customs, export controls and sanctions, and increased use of licenses. New regulations in the EU, and uncertainty in the US. Tensions between the US and China continuing.

3. New export regulations
Export controls and sanctions have become increasingly precise in targeting both countries and products, and this is likely to continue. Emergence of issues such as human rights and forced labor being regulated through trade. China's trade compliance regime.

4. Emerging technology and tech use
Intangible transfers of technology emerging as a key risk area, government regulators continuing to catch up with existing technology realities, new controls on the transfer of sensitive technologies, especially between US and China. New EU regulations on dual-use exports, surveillance products, and cyber-security.

5. People and operations
Continued change in companies due to mergers or acquisitions based on financial changes as a result of Covid-19 impact, increased pressure to meet business goals. Legacy third-party relationships under pressure.

says, and equally important was "adequately training our teams to address all the changes."

Planning for 2021

Let's say your team has adapted well to remote working. You've gotten into a rhythm with remote auditing, you've shored up the sanctions screening program, and now you are looking at trending areas that might have an impact on the ICP and how you can integrate them. In preparing for a year of further disruption, you would be wise to start early on enlisting help across functions. As LeCour says, "It is critical that compliance departments prepare departments such as Sales, R&D, and Procurement for potential new controls, while also communicating expectations and necessary next steps to senior leaders."

A good example of an area requiring multi-function engagement is the increasing importance to business of human rights. While most companies would have at least a statement supporting human rights and support such declarations as the UN Guiding Principles on Business and Human Rights, many will not be ready for the EU's mandatory Human Rights Due Diligence Legislation, which could be passed in early 2021. Compliance professionals (and C-suite) well understand the negative impact of being associated with organizations tainted by alleged/proven human rights abuse, but all indicators are that respect for human rights will be enshrined in trade regulation in a move to help enforcement.

For the Nokia team, balancing trade regulation and human rights due diligence could require different screening systems and processes. Eric Clark, Nokia's Lead Counsel for Trade Compliance, says, "This new element requires us to ensure we look at all relevant aspects across the company, including procurement and sales activities among others. We also will continue to work closely with our established human rights program as part of our existing human rights due diligence process."

For tech companies, the human rights focus has become especially relevant. The abuse of certain technologies in suppressing human rights has brought widespread public and often governmental criticism. This has meant tighter risk assessment at the product classification stage as well as expanding end-user due diligence and, increasingly, integrating the human rights due diligence process into the ICP.

And it's not only current technology that needs to be considered. In October 2020, The US Department of Commerce, Bureau of Industry and Security ("BIS") imposed export controls on six categories of emerging technology, including machine tools, computational lithography software, silicon wafer technology, digital forensics tools, software designed for monitoring or analysis, and suborbital aircraft. Looking forward, BIS has signaled that it will update controls that address products used for "surveillance, detection and censorship". This type of broad policy move will impact a number of industries where trade compliance teams will want to shore up their monitoring activities.

> "It is critical that compliance departments prepare departments such as Sales, R&D, and Procurement for potential new controls, while also communicating expectations and necessary next steps to senior leaders."

Diego Pol, a Partner at Dentons and Co-Head of Europe Compliance, suggests that keeping on top of sanctions watchlists with a technology nexus will become more important than ever. "We will need to watch out for new controls on the transfer of sensitive technology, especially to China," he says. "The US has already acted on this, but what will the EU finally do?"

Pol points out that it's important not to forget that tighter regulation can be a two-way street. Pol points to China's new export control law, which will become effective 1 December. "We expect official guidelines on export compliance programs to be issued in the near future," he says. Apart from an official "Unreliable Entity List" and the subsequent assessments of supply chains and partnerships this could bring, China appears to be getting a taste for sanctions itself (see News this issue).

Closer to home, another technology-related risk to watch out for – and one that is not specific to tech companies – involves not so much the export of sensitive technology, but rather the technology your company uses itself inadvertently being exported through user error. "Remote work has brought new practices for continuing to work that may entail sharing of technology on tools that were not supposed to be used for that reason," explains Rosa Rosanelli, Group Export Compliance Officer at the Patria Group. "New online trainings, exchanges and intangible transfers of technology have become a key area and will continue to be important."

Rosanelli, however, says she is looking forward to other tech changes, such as more harmonized guidance on Cloud rules in the EU: "2021 will still be challenging entailing new ways of working and changing priorities."

Conclusions: adaptability

The need to be adaptable has been clearly illustrated in 2020. New challenges, new working practices, all have forced trade compliance practitioners to balance the demands of existing ICPs and established process with previously unforeseen challenges. This should be good prep for 2021. Keeping a view of the suitability and effectiveness of the ICP in the round will be key.

Nokia's Clark makes the point, "It is important to ensure that none of our new controls get orphaned from the broader compliance plan... It's also important to ensure that our structure is flexible enough to accommodate changes that will inevitably occur in the coming years."

Heraclitus said: "Change is the only constant in life." For compliance programs that means regeneration and improvement even if the changes that get you there are nothing like what you expected. ■

The importance of enhanced due diligence during Covid-19

Over the last decade, the US has increased its use of sanctions and trade restrictions to protect economic and national security by imposing license requirements, restricting trade, and/or altogether denying certain trade privileges of both US and foreign entities.

The ever-increasing list of entities reflected on the US government's Consolidated Screening List ("CSL")[1] has resulted in significant intended and unintended consequences affecting companies, owners, and employees. For example, the mere imposition of a license requirement on US exporters is often interpreted by global companies and foreign governments as a complete ban on trade with a listed entity.

Ascertaining the ownership structure of a prospective client can also be challenging and the necessity of absolute certainty in knowing your customer ("KYC") and knowing your customer's customer ("KYCC") becomes critical to avert potential government scrutiny, to avoid negative perceptions of the company, and to avoid potential significant penalties. The combination of these events has created a new world in which the necessity of due diligence and, where appropriate, enhanced due diligence, screening programs are evolving and increasing in importance.

To further compound the ever-changing and increasing complexities defining the international marketplace, the on-going Covid-19 pandemic has succeeded in exponentially obscuring global trade compliance fundamentals. As important as due diligence has become, it is even more critical during the Covid-19 pandemic to pay close attention to screening customers and transactions than it was prior to Covid-19.

As personnel and other resources are reduced for many reasons related to the pandemic, the need for revenue increases as opportunities for new business decrease. Uncertain and emotionally trying times distract employees' attention and this can result in transactions being pushed forward with perhaps less compliance scrutiny. Such a situation can

[1] https://legacy.export.gov/csl-search)

be exploited by the very entities the export laws are designed to protect against – unfriendly or hostile foreign governments, terrorist organizations, and organized crime syndicates.

As the current global situation, in its aggregate, risks exploitation by parties with less-than honorable intentions, these parties often use "separated transactions" to illicitly acquire and divert sensitive commodities by splitting the order, payment, and shipment across seemingly unrelated entities. This enables nefarious actors to separate transactional sponsorship across multiple parties, making it difficult for regulatory and enforcement agencies to detect potential criminal activity and otherwise effectively enforce export laws.

A responsible company's understanding of this method of acquisition can serve as recognition of an important red flag of possible illegal activity which, once detected, should cause a company to increase scrutiny of a potential client and initiate its enhanced due diligence screening program.

During a critically disruptive global event such as the on-going pandemic, illicit activity in the acquisition of sensitive and highly controlled commodities can also increase. Historically, effective export enforcement and compliance have resulted from a partnership between government and industry whereby government has relied on industry to help detect illicit activity and maintain appropriate levels of due diligence. This can be done efficiently by implementing the following:

It is even more critical during the Covid-19 pandemic to pay close attention to screening customers and transactions.

1. Use of end-user statements

End-user statements should be filled out accurately and fully, with end-users and end uses properly identified, and should contain reliable contact information for all parties involved in the transaction. Properly and accurately completed end-user statements can assist in protecting a company during a government inquiry if unexpected diversion occurs. Government authorities view positive end-use statements more favorably than broad negative statements (e.g., this item

will be used as a hard drive in a personal computer sold to consumers (positive statement) vs. this item will not be used for any illegal purpose (negative statement)).

2. Identification of all parties involved in the transaction

Ascertain entities responsible for ordering, paying, and shipping/receiving commodities from exporter to ultimate end-user and scrutinize all seemingly nefarious methods of acquisition such as "separated transactions". Request contact information and verify all parties' bona fides. If the parties are not obviously related parties, conduct further enhanced diligence to understand the relationships.

3. Screen all parties

Ensure all parties in a transaction are screened against government-sponsored restricted party lists to perform due diligence to effectively KYC and KYCC. The depth and scope of screening and due diligence should be based on an assessment of risk weighed against the importance or desirability of a given transaction and possible positive or negative valuation of a company's reputation. While the diligence can be done in house – and that may be appropriate for certain situations – it can be done through a paid database provider with the capabilities to not only screen entities through known government "blacklists" but also build out a relationship network to provide an accurate depiction of ownership structure, financial relationships, partners, third-party relationships, etc.

4. Conduct industry-led end-use monitoring

Conduct a company-sponsored post-shipment verification ("PSV") to ensure the items have been received by the stated end-user and are being used for the stated end use. Any deviation of the end-user and end use after the sale, or lack of cooperation in the verification process, can be provided to government via a voluntary self disclosure or an industry-initiated suspicious activity referral. For large-value transactions or transactions involving a high degree of risk, a company may consider consulting with a third-party firm with expertise in government-sponsored end-use monitoring. This can usually be implemented through audit rights in your contract or supply agreement. For countries where government-sponsored end-use monitoring is not available or is practically impossible in most situations – this approach could also help expedite or secure export licenses as it would address some of the concerns of government but without the political challenges faced in a government to government context.

The global marketplace continues to increase in complexity and risk as government regulators advance political and economic objectives through growing and evolving export controls and sanctions. The global trade compliance function becomes increasingly important for a company to ensure it is not conducting business operations in conflict with ever-changing government priorities. Effective and efficient due diligence can assist in protecting a company from diversion, illicit acquisition, tarnished reputation, significant penalties, and the potential for government scrutiny. ■

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The road from data to knowledge

They call us Information Technology ("IT") for a reason. We guard and protect your data and we work with you to build information from it. Armed with your data definitions and locations, we plan and build auditable, reportable information that drives your business and compliance. Now let's get to work...

Use available tools

Take that data and relate it! Mindmapping is a fabulous option to determine where data elements live practically, adding to knowledge of what they are and where they are stored. A great tool online is Mindmeister.com. Remember taking notes in class and drawing arrows and points between concepts? Mindmeister's visual representation of this data surpasses those early scribbles, and can relate multiple mindmaps together to present a fuller picture than your brainstormed early list.

Build the questions to answer

Discover the picture of what you need to know and have access to receive but currently must manually acquire. The mindmaps will show you what is available. Ask yourself: What data are easy to analyze as they are, and what data require transformation to be grouped and automated? An example of data likely to benefit from transformation is the two-character ISO code used for Country of Origin of a good. Zimbabwe is ZW. Which would you rather read in a report, Zimbabwe or ZW? Chances are your systems store the standard ZW, so translating to Zimbabwe helps readability.

Consider: What events that you would like to measure have traditionally given you problems across time? What are the concerns of today? Tomorrow? What Covid-related (unprecedented) shifts have you made to accommodate our strange world, and what impact have they wrought in terms of export compliance and exports in general?

Two questions may help you answer these and move into even further exploration: What could I know? What have I chosen to ignore because it seemed impossible to know?

Then ask yourself: What data are involved in the answers to my question? This question leads to doing the right work early and laying foundations for the reports that can revolutionize compliance visibility. Iterate through the questions and high-level answers and determine the individual and groups of data elements involved in answering each question. And, about those data elements:

Current technology builds on living, interactive reports, not the paper things already out of date thwacked down on your desk once a week or once a month.

- Determine their uses, for each report
- Determine their interaction with each other in the context of the report
  - Logic: What constraints are there on the data? How do we know when data is invalid?
  - Dependencies: What relies on this data? What does this data rely on?
- Add to the data documentation what you learned and any risks you found.

Plan to audit, audit to plan

Current technology builds on living, interactive reports, not the paper things already out of date thwacked down on your desk once a week or once a month. The concept of a dashboard is fantastic; populate it with what matters.

Technology enables reporting of relevant data points across time: past, present, and future. Trending. If you visit a stock-management tool, you can view the stock ticker and other identifying information as well as values tied to key points in time, like pricing from one day to another. The data is organized and typically drillable. It looks simple because it is well organized. Your reports must follow that model. Take your mindmaps and documentation, find your favorite IT professional, hand over that analysis, and collaborate. Ensure understanding by stating and restating what you hope to accomplish, and complete the model details for your reports.

Test, my friend

When you order from Amazon, you know what you expect to receive and when. Reports should be no different. Test your assumptions with the data in the reports when they are programmed. Success for the first few iterations of testing will require you to manually build each report and compare it with the computer-generated output. Analyze the gaps using a small subset of available data and then expand to more data as you gain trust in the report's accuracy. Then, document these "double-check" points – the verifications of results from your manual work. You will effectively document and test your tests. And speaking of testing tests, audit your reporting effectiveness. What additional information can I report from this data? What additional data elements can bring more knowledge from your information?

Knowledge

Knowledge is close at hand, ongoing knowledge. While the project to build additional knowledge requires detailed, organized thought and documentation, the knowledge you will gain far into the future is a worthy cause. Remember to – as my English-teacher mother would say, "Inspect what you expect" across time to ensure that no underlying change to the data have changed how the data interoperate. Happy reporting! ■

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Page Fura P.C.

We are a Chicago-based boutique international trade law firm that concentrates its practice in import, export and supply chain security. For many years, we toiled in the relative anonymity of our own world consisting of fellow practitioners and trade compliance "geeks" who we passionately embrace as our own. While we have had many Warholian "15 minutes of fame" along the way, nothing prepared anyone in our practice area for the onslaught the Trump Administration has wrought.

As a firm, we recently celebrated our 12th-year anniversary. Before that, we worked at other firms who – for the most part – were similarly situated boutique practices. Over the years, we have found working in a boutique to have unparalleled benefits as it has enabled us to hone our skills on both the import and export sides of the fence, while working with clients across an incredibly diverse range of industries. While the current pandemic has constrained our travel, over the years we have been fortunate to have traveled to destinations both far and near and to walk the floor of many a production site. With a bow to Stanley Kubrick, we love the smell of hydraulic fluid in the morning.

MONDAY

Monday. Actually, Sunday into Monday. After putting the finishing touches to responses needed to be on our clients' desks as they returned to their (mostly remote) offices Monday morning, the wee hours of Sunday (also known as Monday) see us putting together our "priority project" list for the week. Although we strive to remain on target as the week commences, in the tweet-filled world in which we have been living, almost-instantaneous changes in administrative policy along with the periodic awakening of the federal agencies with which we work, oftentimes conspire to undermine our best intentions.

Today, however, the detours are not as profound and we are able to complete and submit a ruling request to CBP seeking confirmation on country of origin and the applicability of Section 301 tariffs, address a needed tolling agreement with OFAC on behalf of a client for which we have filed a voluntary self-disclosure ("VSD") and address pending questions on a court action that we filed with the Court of International Trade challenging the imposition of Section 301 tariffs on imported Chinese origin goods. We also work with a client in preparing language for incorporation into its quarterly report regarding the impact of impending tariff refunds to which it is entitled. Next, it's time to support a client with the preparation and filing of its updated security profile under the CTPAT program. In addition, preparations were also under way for:

For many years, we toiled in the relative anonymity of our own world, consisting of fellow practitioners and trade compliance "geeks".

TUESDAY

The first road trip in months! While it only required hopping in a car, it was nice to be able to get behind the wheel and go "on site" to meet with a client. Meals packed in the car, a hotel that was antiseptically wiped, and meetings incorporating social distancing and masks made for a surreal experience. But it was necessary, and once again demonstrated how "going to the spot" brings with it benefits that conference calls, Zoom/Skype/BlueJeans/Teams meetings or other methods of communicating cannot bring to the table. While everyone keeps prognosticating about what the "new normal" will look like once a confirmed vaccine is available, hopefully it will not result in the end of face-to-face client meetings.

After developing an agreed-upon strategy to address the issues discussed during the meeting, we turn to several

Shannon Fura and Jeremy Page wrestle with the most pressing trade compliance issues of the day.

pending client questions on the drive back and upon our return home, including confirming the export controls applicable to a proposed shipment to Dubai, implementing a policy/program to establish compliance with federal contracting pursuant to Section 889 of the 2019 National Defense Authorization Act, and supporting a client with the preparation and verification of a proposed supplement to a previous import prior disclosure on errors in its entry declarations. The interim rule implementing Section 889 in particular promises to have "legs" as how both offerors and contracting agencies will apply these new requirements remains to be seen.

WEDNESDAY

Split duties. Shannon, in her role as Board Member and incoming Treasurer to the National Association of Foreign Trade Zones ("NAFTZ") had both Speaker and Moderator duties for the NAFTZ's annual conference. In another first, the conference was virtual, depriving us all of the opportunity (and benefits) of seeing faces old and new. As challenging as the current remote environment has been for us, it is clearly even more so for associations such as the NAFTZ. And yet, despite those challenges, the program runs smoothly from beginning to end.

Meanwhile, Jeremy had his own list of "to-dos", including finalizing and submitting a pair of ruling requests seeking confirmation of country of origin (a "hot topic" for the trade in light of Section 301 on goods sourced from China), supporting a client in evaluating military end use/end-user considerations for proposed transactions within China, and working through operational issues with a client who had recently "gone live" with a foreign-trade zone.

On top of it all, in the middle of the day, Jeremy had to break away for a few hours to get our son (yes, we are married) a Covid-19 PCR test. In today's world, wiping one's nose four times is enough to send out the alarms and our son was banished from school until the test results came back. Fortunately, the outcome was negative and the world returned to "normal", but not until a few days of reacquainting ourselves with remote learning (insert "grumble" here).

[1] https://ustr.gov/about-us/policy-offices/congressional-affairs

[2] Agreement between the United States of America, the United Mexican States, and Canada

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THURSDAY

It's Thursday. For many, this is the backside of the week as people begin to glide into the weekend. Not so for us. Today we are tackling more of our potpourri of projects including revisiting several items that had moved to the next phase of review. Yin and yang, we start the day with excellent news that a client's import prior disclosure has been accepted with only a small amount of interest remaining due and owing but then learn shortly thereafter that another client's submission will be subject to regulatory audit review. Although we were hopeful that the information presented would be sufficient for CBP to sign off on the filing, CBP chose instead to exercise its authority to further validate the details of our submission. We also support a client in submitting comments to USTR/Congress[1] regarding a requested change in USMCA[2] interpretation (much of our time both earlier this year and all of last year was spent on USMCA implementation), as well as work with our third-party processor in the preparation and filing of various valuation-related reconciliation submissions from a US import perspective. Finally, the tolling agreement worked on at the beginning of the week is now fully executed, providing additional breathing room for OFAC's review of our client's VSD.

In addition to continuing to support our clients on these initiatives, new opportunities also presented themselves as we completed an on-line request for proposal process for a potential client. While we "get" the benefits inherent in using such tools (certainly in today's environment), to us, there remains no substitute to sitting across the table and discussing the bona fides of our potential representation directly with the company's representatives.

FRIDAY

Friday has arrived! With it comes a variety of requests from clients who are catching up on their own to-do lists by lateraling over the critical input needed from our firm before senior management will sign off. And, of course, that means our Friday carries over to our Saturday and Sunday as well. Of particular note today is the chance to hold a virtual meeting with a client's compliance, corporate social responsibility, sourcing/purchasing and legal representatives to discuss CBP's increased issuance of withhold release orders ("WROs") on imported products suspected of being produced with forced labor. This is an area and issue of increasing focus within CBP and one for which companies of all types need to be more-fully prepared. We also provide counsel to a client on CBP's limitations on the provision of shared corporate compliance services, prepare a disclosure supplement for a client on errors in import classification, and address one-off questions on certification requirements under USMCA. The day ends with a take-out dinner from the Thai restaurant down the street before we head home for Friday Movie Night and a chance to recharge our batteries for the week ahead.

We start the day with excellent news that a client's import prior disclosure has been accepted with only a small amount of interest remaining due and owing.

So goes a week in the life of Page·Fura, P.C. While the players may change, the diversity and intensity of the work does not. Sounds like another 15 minutes awaits us around the next corner…. ■

An extreme version of good: lessons from companies under consent agreement

No compliance professional would wish for a consent agreement but, writes David Ring, there are lessons to be learned from those who do experience such fate.

Let me begin with an unspoken truth: the standard of "good" for compliance programs in companies under consent agreement is a standard unmet by any company not under consent agreement. This is not to say that all non-consent agreement companies are laboring under deficient programs and merely biding time before their turn on the wheel. It is to recognize that compliance programs are, and must be, calibrated to risk: if you want zero risk, stop engaging in the regulated activity; if you have a limitless risk tolerance, do next to nothing; but if you want an effective, rationalized compliance program, you must find your spot somewhere in between. When under consent agreement, however, your choice of where to land on this spectrum is limited. You must meet a standard of excellence that can be attained only when a fail-safe compliance program becomes one of the company's primary priorities. And that rarely, if ever, happens, absent a consent agreement.

This truth is not a reason to simply avert gaze and utter a but-for-the-grace-of-God prayer when passing your consent agreement counterparts. The repentant and unrepentant, alike, can gain critical lessons from those who have been forced to mold their compliance programs into some extreme version of good. Let's focus on three: (1) independence matters; (2) your program must be consistent and auditable to a centrally designed standard; and (3) your program must be integrated into your business processes.

1. Independence

Consent agreements typically require companies to do one thing that they otherwise would not do: hire an external compliance monitor. The monitor, who is subject to government approval, is responsible for overseeing the company's enhancement efforts under the consent agreement and for reporting the results. This is bad, right? No one wants to be second-guessed or micro-managed by someone unattuned to daily business pressures, and who (maybe) has never borne the burden of building a compliance program and, therefore, knows not the true complexities and challenges of doing so. Or is this good?

> If a job should be done to sufficiently reduce risk, the monitor can say so – even if their point of view will be unpopular.

You finally have a tip to your spear that can be used to force change, even in the most inhospitable business quarters. Of course, the answer is, "It depends." Monitors can range from super-stewards to mini demagogues, all depending on who's selected and how they interpret their obligations. Yet, all monitors can offer one superb quality: independence; which, of course, is their *raison d'etre*. If a job should be done to sufficiently reduce risk, the monitor can say so – even if their point of view will be unpopular and may implicate the need to fortify existing business processes or cease certain business activities.

The point for companies not subject to a consent agreement is that there is a value to independence, or "autonomy", even if it comes from within the organization. Those enforcement and regulatory agencies that have provided clear, articulable standards for assessing corporate compliance programs place heavy emphasis on whether senior compliance leaders have "sufficient autonomy from management, such as direct access to the board of directors or the board's audit committee,"[1] or "sufficient authority and autonomy to deploy its policies and procedures in a manner that effectively controls the organization's [] risk."[2] This is not to suggest that in-house compliance

personnel should seek to shed all constraints when negotiating risk-based decisions; that would be a mistake. But companies should consider how their compliance organizations are structured, and whether their structures provide the internal autonomy needed for senior compliance officials to be effective and credible with the government. Government regulators expect such autonomy, and assess for it when considering whether to pursue a consent agreement.

2. Centralized control

Consent agreement companies with dispersed operations and highly matrixed business functions quickly learn that decentralization is death. Most likely, this decentralized structure contributed to the failures that underpinned their consent agreements. To survive a consent agreement, a company must undergo external audits (usually: two), and consistently prove in its voluntary disclosures (usually: very many) that its compliance controls have been consistently and effectively implemented across the organization. If a company's compliance program is built on corporate policies that merely set high-level compliance objectives but leave it to dispersed semi-autonomous business units to implement those objectives without guiding processes or tools, then it becomes a mighty task to prove that each business unit's local procedures and controls satisfy the objectives. And, most likely, they will not. Instead, to successfully impose order on the chaos of a decentralized business, it becomes necessary to deploy a command and control system that allows a centralized compliance function to flow-down a standard set of processes and tools that business units can adapt and use to satisfy the heightened standards the government expects.

For companies not subject to a consent agreement, the lesson here is straightforward. We no longer live in a compliance environment where senior personnel can assume a business unit's compliance program is sufficient simply because a top-notch compliance person is running it. Each business unit should be able to pass an audit or assessment which tests whether effective controls are in place based on objective standards rather than subjective or whimsical expectations. Think, for instance, of what it means to test whether a business unit has sufficient controls for its technical data transfers. It is one thing to test whether the entity has effectively implemented a standardized process, which itself is sufficient to meet regulatory requirements; it is another to determine whether localized decision-making, which may flow from informal or ad hoc processes, is consistent and effective. Moreover, when corporate processes depend on centralized, shared IT platforms, it becomes even more efficient to develop common automated solutions for daily activities that rely on the IT platforms. In short, a centralized flow-down of standard solutions that local business can adapt to their practices sets a baseline for compliance requirements and is key to mitigating risk.

We no longer live in a compliance environment where senior personnel can assume a business unit's compliance program is sufficient simply because a top-notch compliance person is running it.

3. Integration

As an external monitor, one of my favorite parlor tricks was to stand up before a room full of senior business personnel and ask: "Who owns compliance?" Typically, the audience would be savvy enough to intuit this was a prompt for all of them to raise their hands, which they would do; and which would cause the compliance personnel in attendance to exhale a huge sigh of relief. That, of course, was the right answer for an obvious reason: compliance personnel are not the ones who export commodities or technology and create the chance for legal violations; businesspeople do. Thus, if a business process does not include effective compliance controls, it becomes difficult for the business to be compliant. An additional challenge arises when the business processes, themselves, are ad hoc or non-existent. Thus, one of the great challenges for a company under consent agreement is to determine how to channel business processes of various maturity into gated compliance processes, so that the compliance processes can become part of the everyday business activities.

Truth be told, how often do business personnel truly believe that they own compliance, not compliance personnel? So, it becomes imperative for companies to develop compliance processes that are supported by user-friendly tools (think: checklists or automated work-flows) that can be adapted to, and tapped into, a wide range of business activities. The challenge then becomes how to identify all those business activities that must be channeled into the standardized, gated compliance process, and to ensure that the gated process is consistently used. Because this herding may rely heavily on training and awareness rather than a disciplined revision of mature business processes, it becomes paramount to implement a system of auditing or testing, in order to ensure that all variety of business processes are flowing through the proper compliance channels.

Look to the future

As noted at the outset, companies under consent agreement are required to devise and implement compliance programs that satisfy an extreme version of "good". Talk to anyone who has worked for such company and you will hear endless stories of the tireless effort that was needed to rebuild their company's compliance program and satisfy the government's expectations. The frequently told lesson from these conversations is, "You don't want this to be you; share the costs and consequences of a consent agreement with your senior management before it becomes too late." But avoiding the pain of a consent agreement should not be the only takeaway. There are valuable lessons to be learned from companies under consent agreement, including the need to provide an effective structure to your compliance program, in order to make it lasting and effective. ■

About the author:

David Ring practices law in Washington, DC and New Haven, Connecticut. He has experienced consent agreements from all angles: first, having served for years as a federal prosecutor; then, building a compliance program in-house for a global aerospace company under consent agreement; then, serving as a US State Department-appointed monitor; and, now, representing companies subject to consent agreements, and others that have escaped such fate. DRing@wiggin.com

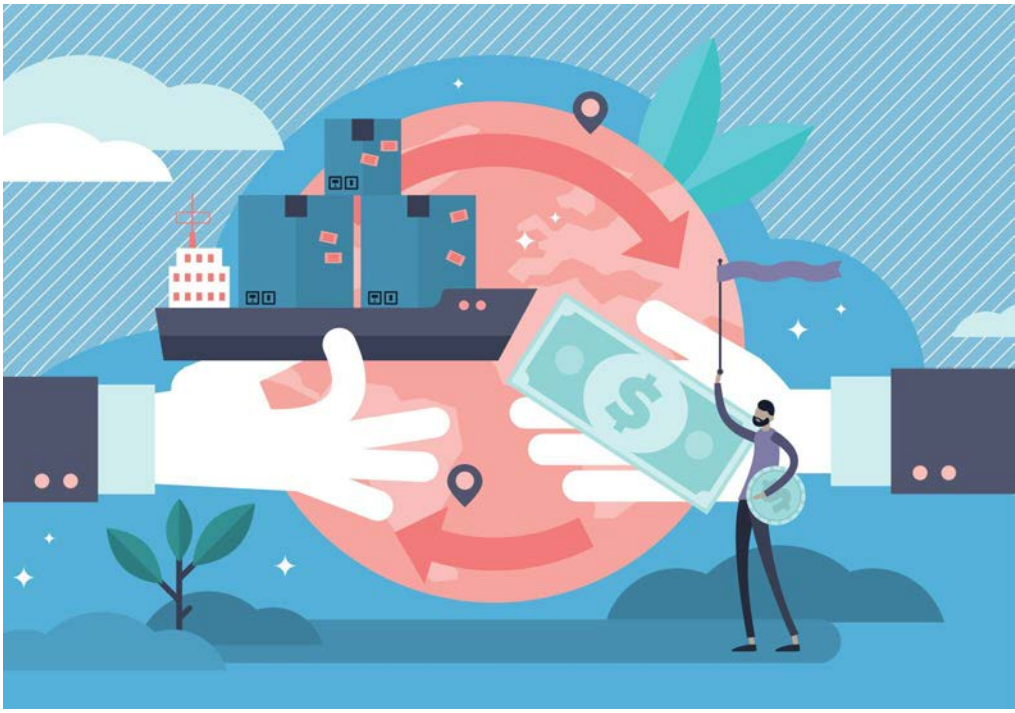
[1] See US Department of Justice's "Evaluation of Corporate Compliance" (2019), https://www.justice.gov/criminal-fraud/page/file/937501/download, at 11.

[2] US Department of the Treasury's Office of Foreign Asset Control's, "A Framework for OFAC Compliance Commitments" (2019), https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf at 2.

Overseas distribution engagements: Top 10 critical issues and key agreement considerations

Companies tend to get the "itch" to expand into foreign markets when they begin receiving inquiries from new customers abroad and if approached by a third party requesting to become an authorized distributor. Distribution arrangements offer substantial benefits to companies as overseas distributors tend to have an insider's grasp of current market conditions and trends in their countries. The use of overseas distributors can also reduce sales and international trade compliance risks. The typical distribution arrangement usually involves a third-party distributor that will purchase goods directly from the company, arrange for their export from the home jurisdiction and importation into authorized territories, and actively promote and market the goods to customers in those designated foreign markets. In return for its efforts, the overseas distributor will keep the difference between the price paid to the company and the price or margin at which the goods are sold to customers in its territory. However, engaging overseas distributors is not a risk-free proposition. Companies should carefully plan the engagement of overseas distributors in terms of what the ideal arrangement will entail, the vetting of candidates, and the negotiation of robust written agreements.

Of all of the issues that should be carefully considered when exploring the engagement of an overseas distributor, the following can be characterized as the "Top 10 Most Critical Issues".



1. Vetting distributor candidates

The US Commercial Service and various third-party service providers routinely assist companies in investigating the bona fides of potential distributor candidates. As a general rule of thumb, the company's due diligence efforts should target:

- The reputation and experience of the candidate in the industry and market territory;
- Financial ability of the candidate to perform under the engagement;
- The candidate's criminal history and prior civil litigation;
- The candidate's operational ability to perform;
- Other product lines handled by the candidate in the market territory;
- Ranking of the territory on the Transparency International Corruption Perception Index;

> Companies should carefully plan the engagement of overseas distributors in terms of what the ideal arrangement will entail, the vetting of candidates, and the negotiation of robust written agreements.

- The candidate's past and current compliance with the Foreign Corrupt Practices Act ("FCPA") and local anti-corruption/anti-bribery laws and regulations; and,
- Whether the distributor has implemented internal controls and compliance programs.

2. Exclusivity vs. non-exclusivity

Companies should consider at the outset whether the distributor will be given exclusive rights to sell their products in the authorized territory, or whether they intend to engage multiple distributors in a given region. Exclusivity is risky for companies as the distributor may turn out to be a poor performer; therefore, the written agreement should set forth minimum purchase requirements or other specific performance obligations that the distributor must meet in order to retain exclusivity in the territory. However, companies should review local laws carefully as many countries are very protective of their distributors – they may default to a finding of exclusivity for the local distributor unless the written agreement states otherwise. It is always a good idea to have local counsel with boots on the ground in the territory review and provide input on the draft agreement.

3. Local law considerations

Local laws will also vary as to how and under what circumstances a distributor may be terminated. Again, local laws are often designed to favor local distributors and may limit termination unless "just cause" can be shown. Even if just cause is demonstrated, local law may still require that the distributor be compensated. In addition, local competition laws in many countries prohibit distribution

agreements from restricting online sales or from establishing minimum resale prices. Again, local counsel should be engaged to review and provide input on draft agreements.

4. Intellectual property rights ("IPR") protection

The distribution agreement should clearly define what "intellectual property rights" are, specify that the IPR (as well as any IPR relating to future derivative works) will remain the exclusive property of the company, and provide that the distributor is merely given a non-transferable, non-assignable, non- exclusive right to use the IPR in the marketing and sale of the goods in the authorized territory. Companies should register their IPR at home – in the US, with the USPTO, and record their trademarks with US Customs and Border Protection for protection against infringing goods at the US border – and in the countries in which the products will be marketed. It is not a good idea to allow the overseas distributor to register IPR (or web domain names) in its own name in the authorized foreign territory as this can lead to situations in which trademarks or domains are held hostage if the company seeks to terminate the relationship.

5. Product registration

Ideally, all registrations, licenses, authorizations or approvals relating to the products should be made in the name of the company. There have been cases in which product registrations filed in the name of the distributors (and not in the name of the company) have been held hostage when companies have later sought to terminate the relationship.

6. Anti-corruption and anti-bribery

The US Foreign Corrupt Practices Act ("FCPA"), the UK's Bribery Act, and many local country laws prohibit the offer or making of payments (directly or indirectly) to foreign government officials for the purpose of influencing an action or decision or securing an improper business advantage. Companies should confirm: (a) whether any of the distributor's principals or close family members are foreign government officials; (b) the candidate's compliance history; and (c) that the candidate has established formal anti-corruption policies and procedures. In addition, the company should consider requiring the distributor to certify its ongoing compliance on an annual basis.

7. Language

If multiple translations of the agreement have been prepared, the agreement itself should specify which language version will control in the event of a dispute.

8. Terms of sale

Companies and their distributors should clearly identify the terms of sale that will apply to their transactions. The Incoterms® 2020 are the international commercial terms used by sellers and buyers in B2B contracts for the domestic or international sale of goods. Although not required by law, they are helpful as they identify which party will be responsible for the packing, marking, loading and unloading of the goods, export and import clearance, transportation, where and when delivery and risk of loss transfers from the seller the buyer, and the costs borne by each party.

9. Routed export transactions

In some cases, where the transaction involves exports from the United States, the overseas distributor may want to assume control of the shipment – under US law, such transactions are known as "routed exports". It's important to understand the implications of this. As long as routed export transactions are set up properly, the distributor and its US forwarding agent/courier will be responsible for US export compliance, and the US seller will only be responsible for the accuracy of the information it provided to the forwarder/courier about the goods and the transaction for EEI filing purposes. However, if a routed export is not properly set up, the US seller may be held liable for any export violation that occurs. In order for a routed export to be valid: (a) the distributor must provide a written assumption of responsibility statement to the US seller; (b) the distributor must authorize the US forwarding agent/courier to handle the export and file the EEI on its behalf; and, (c) the forwarding agent/courier must flag the shipment as a routed export in the EEI filing. Non-US exporters should check their local regulations on routed exports.

10. Indemnification

Generally, indemnification provisions in distribution agreements will go both ways. The parties will typically agree to indemnify and hold the other party harmless from liability relating to acts, omissions or misconduct they or their agents may make under the agreement.

Take the right steps for success

The key take-away is that investing the necessary time, money and resources in mapping out the ideal distribution relationship, selecting the best distributor, and consulting with counsel at home and abroad in the drafting of a robust written agreement are all invaluable steps that should readily yield a profitable entrance into new international markets and long-term success. ■

Other key provisions to be addressed in the written distribution agreement include:

- Identification of the sales territory;
- Identification of the products that will be subject to the engagement;
- Use of sub-distributors;
- Placement, acceptance, rejection and cancellation of purchase orders;
- When title to the goods transfers;
- Right to add, exclude, discontinue or modify products or product specifications;
- Minimum purchase commitments;
- Prices for the goods sold to the distributor, timing and method of payments;
- Suggested pricing for the goods sold by the distributor to end-users;
- Advertising and marketing (e.g., materials, website content, training, translations);
- Provision of samples for demonstration purposes;
- Product liability and recalls;
- Representations and warranties;
- Duration and termination (e.g., termination for cause or convenience, notice, immediate termination, products in inventory, return of confidential information, samples and marketing materials);
- Protection, use and safeguarding of confidential information;
- Product handling, storage, security, disposal of products;
- Sales reporting;
- Audit rights;
- After-market service, support and repairs;
- Labeling and packaging of the products;
- Non-conforming products;
- Governing law and jurisdiction;
- Dispute resolution;
- Force majeure;
- Severability; and,
- Compliance with laws (e.g., export, sanctions, import, anti-corruption, data privacy, anti-boycott, product safety, hazardous materials, prohibitions on forced labor, compliance with applicable local laws, etc.).

About the author:

Melissa Miller Proctor advises small and medium-sized companies on the full range of issues involving export controls, embargoes and economic sanctions, customs laws and regulations, and other government agency requirements that impact imports and exports.
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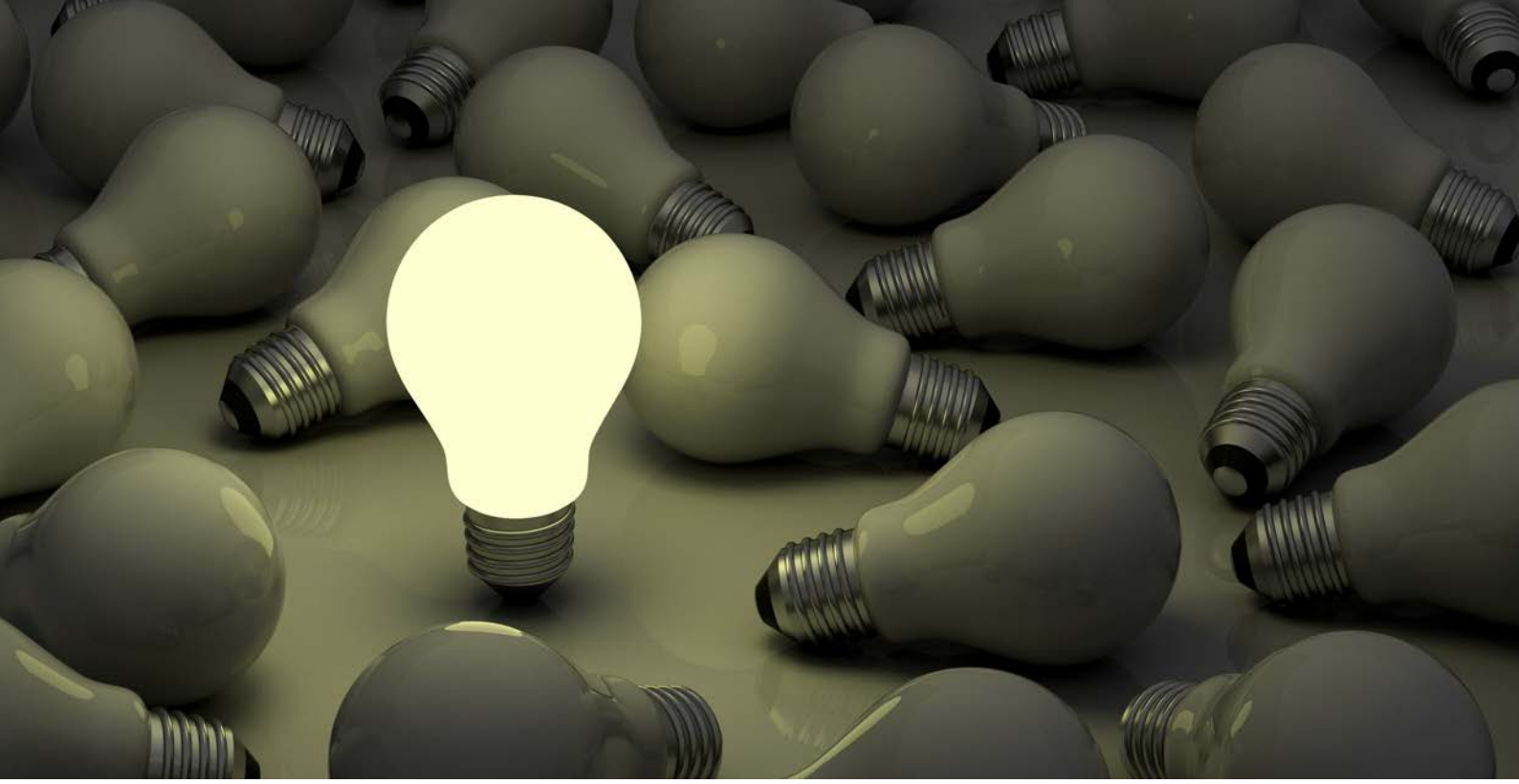

Publish and prosper – some thoughts about thought leadership

"Publish or perish" is a timeworn expression that stands for the intense pressure faced by professionals in higher education to continuously write scholarly articles in order to succeed. It's often justly criticized as an artificial measuring stick that elevates quantity over quality.

But while "publish or perish" sounds like an unpleasant all-or-nothing proposition that looms large in the life of the university professor or scientific researcher, I have adopted it, with slight modification, as a mantra that has helped me find satisfaction and success in my own career in trade compliance.

I find that it helps to reframe an idea in positive terms to better illuminate its value proposition. In this spirit, I have also adapted it to my own optimistic worldview. Allow me, then, to share some thoughts about "publish and prosper", a principle that has served me well.

The deep end of the pool

"Thought leadership" is a wonderful if somewhat hackneyed term. Like "synergy" and "disruption" and other corporate buzzwords and phrases, its overuse can obscure its importance. For one thing, thought leadership seems like something that only comes with many years of experience, or is the province only of select experts with exceptional brilliance.

That's nonsense. Within each of us is a bona fide thought leader ready to emerge. I submit that the path to thought leadership requires embracing thought fellowship; i.e., manifesting a genuine interest in what you do. Nurturing that interest so that it grows into passion. Then adding ambition. And by ambition I don't mean only striving to advance up the career ladder. Be ambitious to become more excellent in what you do. And for goodness' sake, don't wait until you've reached some magical number of years of experience. Now is the time…

In my own case, this evolution came quite accidentally. As a junior compliance officer in the US Treasury Department many years ago, I was keen to learn and advance. One day, my boss "volunteered" me to be the regular OFAC speaker at export control seminars sponsored by the US Commerce Department. This duty would involve frequent travel and making presentations about US sanctions before crowds of exporters, lawyers, and compliance professionals. Be careful what you wish for…

I was terrified. Other than some required speaking in college and law school, I tended to avoid the podium like the plague. I tried to talk my boss out of it. I was too inexperienced. I didn't know the subject matter well enough. Etc. Etc. In fact, it was the kind of duty that most of my colleagues avoided, so it seemed like it fell on me as the junior guy. "Commerce wants someone from Treasury to speak at their seminars." "Yuck, no way – give it to Pisa-Relli…"

Within each of us is a bona fide thought leader ready to emerge.

The first few seminars were pretty intimidating, and I was decidedly lackluster. Basically, I would read a prepared speech, while gripping the podium with white knuckles. Questions made me freeze like a deer in the headlights. But with each new city, my confidence grew. Canned speeches became replaced by index cards with talking points. Eventually I could speak completely extemporaneously. And this was all before PowerPoint. High tech

back then involved transparencies and overhead projectors…

One of the most important habits I developed was to not fake my way through. If I didn't know the answer to a question, I would just say I didn't know it. I would ask if anyone in the audience knew it, and I would always offer to follow up with an answer after I had a chance to research the issue. Over time, the line of people who would come to talk to me after a presentation grew. And it wasn't because I was perceived to be the last word on anything. People just wanted to share their own views or simply make a connection. This was LinkedIn before LinkedIn was even an idea.

Those early speaking gigs opened a lot of doors for me. Soon, I was invited to speak at privately sponsored events. And my career prospered as a result. But the next frontier was still before me.

The write stuff

Eventually I ended up as in-house counsel for a European aerospace and defense firm heavily involved in ITAR-controlled activity. One of the big issues everyone talked about at conferences was ITAR enforcement. This was at a time when each new settled case came with bigger penalties, and more onerous mandatory compliance like outside monitors and government audits was becoming the norm.

I would talk endlessly with colleagues in industry about what each new case meant in terms of government expectations, areas of enforcement interest, etc. And so, I began to compile a digest of reported ITAR cases, at first just for my own benefit. I would analyze the cases, describe very succinctly the takeaways and trends, and often use this information to ensure that company leadership paid adequate attention to compliance. With all the facts and figures at hand in this manner, I was invariably able to make a compelling case, whether for more resources or to keep the business on the right path, lest we become an entry in the digest (which we did, but that's another story for another time).

I began to share the digest with colleagues from other companies and in private practice. Soon I gave it a fancy name – "ITAR Enforcement Monograph" – and demand for it grew dramatically. The rest, for me at least, was history. I was invited to write articles for journals, as well as become a co-author of a desk reference on export controls, and I found I very much enjoyed sharing and exchanging knowledge with peers.

Publish and prosper – some lessons learned

Speaking and writing and generally being active in sharing information reaps a bountiful harvest. You will become very good at what you do, for starters. You will contribute to better practices and help your own organization, as well as your business partners and clients, comply more effectively. And, of course, your career will flourish. At the risk of being trite, you have the potential to become your own brand. You should build that brand, cultivate it like a beautiful garden, and share the fruits abundantly. Here are some guideposts that have helped me do so:

1. Just do it

Don't wait for some magical moment in your career when you think you have enough experience to say something. You have something to say right now! You don't have to be the last word on anything. Be the first. Just ask questions. Solicit the views of peers. Find something you want to know more about and make that your topic. If you like the articles you read in a particular journal, ask the editor if they are accepting submissions. Start a blog. Just share things with friends and colleagues. Eventually, the platforms will come to you.

2. Develop a cadence

I decided that I would endeavor to speak or write at least once every calendar quarter. Sometimes I will do more. But I try my very best never to do less. Having self-imposed expectations keeps me disciplined. Do what works for you. But if you want to gain traction and maintain relevance, I suggest you keep to some regular routine that suits you.

3. Avoid overexposure and "brand fatigue"

When the invitations started to roll in to speak and write it was heady stuff at first. It was a rush to see my name and headshot on conference brochures, and I felt I had a lot to say. Then one day, a friend and event promoter had a very candid conversation with me during a taxi ride. She told me that I risked losing relevancy by trying to do too many things at once. At first, I took this very poorly. But I realized that she was giving me valuable and honest feedback. So, I slowed down, and became pickier about the events at which I spoke.

Bottom line: no one wants to see you hold forth day-in and day-out. Hold back. Pace yourself.

4. Find your voice

Earlier in my career I wrote and spoke about very technical topics. One of my favorite articles I wrote was a dense examination of the ITAR's brokering provisions. It took months to research, involving collaboration with numerous peers. It was a painstaking exercise. In those days, I was principally a legal adviser. These days, I am more of a team lead and administrator. And my articles

At the risk of being trite, you have the potential to become your own brand.

are now shorter, more conversational, and more general in nature. Whatever your role or stage in career, find a voice and tone suitable to the circumstances. In this connection, invest in training and professional reading on artful speaking and writing. It's most certainly a journey; not a destination.

5. Become famous for something

This an Accenture axiom, actually, and stands for the proposition that you will succeed by differentiating yourself and standing out for something good that others don't have or do. In my case, publishing the ITAR enforcement digest was the key to unlocking the door. What you are famous for today may be different from yesterday. But find a topic or idea that interests you, and that no one else has explored to your satisfaction.

That's enough from me for now. I really look forward to hearing what you have to say! ■

About the author, John Pisa-Relli:

John is the managing director of trade compliance for Accenture, a $43+ billion consulting, technology, and outsourcing company with more than 500,000 employees in over 50 countries. In this role he leads the company's internal trade compliance program and legal team and serves as chief in-house counsel on all matters pertaining to economic sanctions, export controls, and other legal requirements that impose restrictions on the worldwide transfer of goods, technology, and services.
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The ICPA: knowledge, networking and fun

In 2001, the International Compliance Professionals Association ("ICPA") found life as an information exchange in Texas's Dallas-Fort Worth area between Ann Lister and Lynda Westerfield. Working at Texas Instruments and Pier 1 Imports, respectively, the two women would compare notes and share thoughts on trade compliance issues, and soon their two-person email exchange expanded into a local networking group, which, in time, became the ICPA – today, a global organization with 3,000+ members. While the ICPA's ethos has remained the same as the original information exchange – i.e., "to serve the needs and enrich the knowledge of the individual trade compliance professional" – the ICPA's reach is truly global.

Education, networking and...

"The goal of ICPA is three-fold," says current board Vice President Jim Ervin, trade compliance manager at TTI, Inc.: "Education, networking and fun."

The ICPA brings those three elements together through a host of conferences taking place throughout the year; the main event is in the spring, changing locations generally coast to coast, with additional locations around the globe year on year. For spring 2021, pandemic conditions permitting, the conference will be held in San Antonio in March with an ITAR-focused event following in Fort Worth in April, and an EU conference in September in Dublin, Ireland.

Today, the spring conference attracts something in the region of 800 trade compliance professionals. Ervin recalls his first ICPA conference where he was impressed by the range of topics covered and which included exporting, importing and foreign trade zones: "The vibe was just different. You could tell people enjoyed being there." For Ervin, it is the quality of speakers that is the reason for the event's success. "We strive to have the best of the best speak. It is quality education. We pay attention to what people can take back to their desks." Ervin points out that the association hosts a "bootcamp track" for newer trade compliance professionals.

"ICPA exists because of our members' desire to learn and grow in this ever-changing field and because of their generosity in sharing their knowledge," says Lockheed Martin's Lila Landis, a long time member.

The international association is supported by smaller, regional groupings called DATA groups (Designated Area Trade Associations). These DATA groups hark back to the early days in their support of networking and education on the more local scale, providing virtual and real-life networking in specific locations and industries. Ervin notes that he has lunch regularly with DATA group members just to exchange views on current trade topics. "There are still areas that I don't deal with every day, and when I need to catch up on the nuances of those, I go to ICPA colleagues in the DATA group or check the online library for past conference topics."

Says Landis: "It's critical to develop relationships with other practitioners so you can ask for guidance and advice from other experts."

...don't forget the fun

While it is true that education and knowledge sharing are the main goals for the ICPA, organizers never forget the fun. In 2021 there will be a cruise to Alaska and in 2022, the 20th anniversary conference will take place at the Atlantis Resort in the Bahamas. And lest trade compliance professionals worry about missing family members or making them too envious, the ICPA offers Kidz Kamps at most conferences, so that members don't lose out on valuable family time while networking and learning more about their subject.

Membership

With a focus more on individuals than corporates, the membership fee of $100 per annum (first year is free) is designed to appeal to all.

For further information, visit www.icpainc.org. ■

Mission statement

The ICPA aims to

- Create an On-Line Network for global import and export problem-solving
- Facilitate networking opportunities among the membership body
- Provide opportunities for resource sharing and benchmarking opportunities
- Disseminate information on international trade related matters
- Facilitate Job Opportunities
- Provide Education and Training including Conferences, Seminars and Webinars
- Promote the interests of the international trade compliance professional

The International Compliance Professionals Association brings together members from around the world for education, networking and fun.

www.exportcompliancemanager.com