202: Implementing a Global Trade Compliance Program

8th Annual SCCE ECEI
March 16, 2020 Amsterdam
Kevin Riddell, CCLP, CCEP

Agenda

- Introduction
- What do I mean by “trade compliance”?
- 4 key elements:
  - Structure
  - Training
  - System
  - Auditing
- Regional concerns
  - Extraterritorial application of national law
  - Language
  - Culture
  - Regulatory
- Questions?
Introduction

Kevin Riddell
Director, Trade & Regulatory Compliance Tremco / CGP Group
25 years at Tremco
Canadian
About RPM International Inc.

Owned by RPM International Inc. (NYSE: RPM), a $5.6B, 15,000 employee global organisation

*https://www.rpminc.com/about-rpm/
About the Construction Products Group

Tremco is leading the integration of other RPM products companies into the Construction Products Group*

*https://www.rpminc.com/leading-brands/construction-products-brands/

Key concepts

- Company policy and procedures
- RPM Values and Expectations
- Ethical behavior
Legal requirements

- We must obey all applicable legal and regulatory requirements
- This standard applies to all: our partners, our customers, our competitors (level playing field)

RPM V&E

- RPM V&E sets a higher standard than the legal minimum
- This is a competitive advantage for us due to:
  - Lack of consequences
  - Reputation
  - Customer trust
Ethical behavior

- An ethical corporate culture will always err on the side of compliance
- Do what is right
- If it doesn’t feel right, stop
- When in doubt, seek advice

- If we act ethically we will comply (think of pyramid)

Example of legal, unethical behavior

What do I mean by “trade compliance”? 

- Some industry definitions:
  - “Trade compliance is the process by which goods enter the (name country here) in conformance with all laws and regulations”
  - “trade compliance = export control compliance”
  - “importers and exporters have a responsibility to self regulate and to ensure they are compliant with the international trade laws”
  - “the process by which goods move from one country to another in compliance with the laws and regulations of both countries”
• Clearly "trade compliance" can mean different things to different people

"Trade compliance"

• What I do mean (for the purposes of this talk):
  • Import customs
  • Export customs
  • Import/Export of controlled goods
  • Sanctions
  • Other international or domestic trade compliance tied to national security or safety
  • Preferential trade agreements

• For the countries involved in any transaction, and any other country that applies extraterritorial jurisdiction against that transaction
“Trade compliance”

• What I don’t mean (for the purposes of this talk):
  • Corruption and bribery
  • Incoterms and risk of loss/liability
  • Broad supply chain concerns such as forced labor, conflict minerals, packaging waste etc.

“Trade compliance”

• Some things that often get overlooked:
  • Labelling (language, health and safety)
  • Marking of origin
  • Domestic sanctioned parties
  • End use or user concerns on otherwise uncontrolled products
Domestic sanction example

Sanctions
Annex 1 to Regulation (EC) No 881/2002 is amended as follows:
1. The following entries shall be added under the heading “Legal persons, groups and entities”:
   b) Al-Haramain (Chinese branch): Address: Man Tenzi Street 38, Tirana, Albania.
   c) Al-Haramain (Bangladesh branch): Address: House 1, Road 3, S-4, Utara, Dhalah, Bangladesh.
   e) Al-Haramain (Netherlands branch): Alia Stichting Al-Haramain Humanitarian Aid, Address: Jan Hamersstraat 114, 1013 SW Amsterdam, Netherlands.
2. The following entry shall be added under the heading “Natural persons”:
   a) Aref Abubaker Al-Angi: Date of birth: 25 April 1948.
   b) Hassan Abdullah Herni Al-Turk (also Hans Turki): Date of birth: circa 1944, Place of birth: Region Y, Kigali, Rwanda. Other information: member of the Ben-Abdi核酸 of the Oulad Nour.

End user example

PRESS RELEASE
FOR IMMEDIATE RELEASE
Friday, July 8, 2011

For Information Contact:
Public Affairs
(202) 252-6933

Former Managing Director of [Redacted], Charged with Illegally Exporting High-Performance Coatings To Nuclear Reactor in Pakistan

4 key elements of a trade compliance program:

Structure
Training
System
Auditing

First a quick note

- Various governments and agencies have drafted guidance for compliance programs generally, and trade compliance specifically
- Ensure you study those applicable to you, and integrate those suggestions
- My advice is in addition to any “best practices” or government guidance
Structure

- Centralized vs. regional/local
- Up for debate?

Managing Trade Compliance Data across the Supply Chain Utilizing a Centralized Platform

Why the current compliance model does not fit in a decentralized world

Within each industry, regulated service providers have a similar target audience and there is significant friction for even submitting to those services. For example, users looking to trade commodities requiring control in multiple exchanges. The information and documentation is relatively similar among providers and there is no separate report to the many regulatory bodies.

Here’s an example of what service duplication looks like today:

- Recommend to centralize:
  - Sanctions enforcement and screening
  - Training
  - Auditing
  - Classification
  - Control of system

- Recommend to decentralize:
  - Customs declarations and facilitation
  - License and permit applications
  - Limited decision making (within an escalation plan)
  - Use of system
Structure

- Compliance vs operations:
  - Often trade compliance staff come from a role where they processed customs paperwork
  - Is there a clear separation between trade compliance and customs facilitation?
  - i.e.:
    - Logistics staff add HTS classifications to commercial invoice
    - Trade compliance audit their use of HTS classifications for accuracy and offer training

Other questions to consider:
- # of resources needed (both in operations and compliance) – advocate for adequate resources!
- Where should those resources sit? (Logistics? Customer service?)
- What’s the escalation process if the operator is unsure or thinks there’s a problem (we don’t want the hotline used for minor errors in customs documents)
“It really doesn't much matter where the trade compliance team is placed in the organization as long as it can effectively oversee and control the importing and exporting activities of the company.”


- Are the employees touching trade compliance adequately trained?
- Do they know what is required, right and wrong?
- Do they know who to contact for advice?

- My “ethical behaviour” model fails if people don’t honestly know something is wrong
There are many good “canned” training programs, but…

But nothing beats in house developed training that focuses on your:

- Industry
- Product mix
- Geographic location
- Culture
- Etc.…
- Risk appetite

System

- Doesn't only mean a “software” or computer system, though it can (and in many cases should)
- Some compliance requires automation
- Also refers to the processes and tools given to those close to the action to research and investigate
NAFTA example:
- $4,000,000+ annual avoidance of duty through NAFTA
- We have:
  - 10 separate legal entities
  - Dozens of manufacturing locations
  - 10,000+ inventory SKUs
- Over a million product/plant/company combinations that each need to be checked against NAFTA rules of origin
- Auditing products manually requires unavailable resources

Sanctioned party screening example:
- Over a million business partners in ERP system
- Thousands of global orders daily
- Impossible to check all of these against government sanctioned and restricted party lists manually
We use SAP Global Trade Services as our core trade compliance tool.

- Augmented with several on demand research tools through Descartes.
- There are lots of other automation solutions available.

Trade compliance must be audited internally.

- Balance central compliance auditing with local auditing.

Advantage to local auditing:
- Generally more resources available.
- Close to the action (physically present).
- Customs administrations will want to speak to them (they may not recognize a central department from a foreign nation).

Advantage to central auditing:
- Ensures consistency across organization.
- Generally more experienced/trained in the issues.
- Second set of eyes.
· Returning to the system discussion:
· A common system across regions will facilitate central auditing by increasing visibility

Regional concerns:
Extraterritorial application of national law
Language
Culture
Regulatory differences
Extraterritoriality

- Understand which countries have jurisdiction
- Certainly:
  - Exporter
  - Importer
- Possibly:
  - Country where bank is located?
  - Country of transshipment?
  - Nationality of participants to transaction?
- And ALWAYS consider the USA especially

USA Extraterritoriality

- EAR (Export Administration Regulations) definition
- OFAC (Office of Foreign Asset Control) definition of “US Person”
- ITAR
USA Extraterritoriality

- “Subject to the EAR”

§ 734.2 Items Subject to the EAR
(a) [Reserved]

(b) Except for items excluded in paragraph (b) of this section, the following items are subject to the EAR:
(1) All items in the United States, including in a U.S. Foreign Trade Zone or moving amongst the United States from one foreign country to another;
(2) All U.S. origin items wherever located;
(3) Foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made components that are “bundled” with controlled U.S.-origin software, foreign-made software that is incorporated with controlled U.S.-origin software, and foreign-made technology that is controlled with controlled U.S.-origin technology:
   (i) In any quantity, as described in §734.4(a) of this part; or
   (ii) In quantities exceeding the de minimis levels, as described in §§734.4(b) or 734.4(d) of this part;

- Scope of the Export Administration Regulations

this part;
(4) Certain foreign-made direct products of U.S. origin technology or software, as described in §734.2(d)(3) of the EAR. The term “direct product” means the immediate product (including processes and services) produced directly by the use of technology or software; and

NOTE to paragraph (a)(4): Certain foreign-manufactured items developed or produced from U.S.-origin encryption items exported pursuant to License Exception ENC are subject to the EAR. See §740.17(a)(1) of the EAR.

(5) Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S.-origin technology or software, as described in §734.2(d)(3) of the EAR.

USA Extraterritoriality

- OFAC definition of “US Person”

- Varies slightly by specific sanction, but here is a good example:

Title 31: Money and Finance: Treasury
PART 550—IRANIAN ASSETS CONTROL REGULATIONS
Subpart C—General Definitions

553.329 Person subject to the jurisdiction of the United States.

The term person subject to the jurisdiction of the United States includes:
(a) Any person wheresoever located who is a citizen or resident of the United States;
(b) Any person actually within the United States;
(c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and
(d) Any partnership, association, corporation, or other organization wheresoever organized or doing business which is owned or controlled by persons specified in paragraph (a), (b), or (c) of this section.
Extraterritoriality

- Is it just the USA?

Language

- If you are giving training in a country where the official language is not one you speak, prepare ahead of time: ask an employee who is bilingual to translate (or bring a translator if needed)
- Ensure your policies and training materials are available in every official language of the countries you do business in
- Though many people also speak English, it’s a mistake to assume they all do, and also people may react negatively

https://www.rpminc.com/about-rpm/worldwide-code-guidelines/
Language

- Also ensure your systems can be used in the user’s native language (if possible)

Culture

- Trigger words or negative connotations
- Political views
- Sensitivity to national sovereignty

- Remember: our goal is to have engaged employees who don’t just “follow the rules” but believe in them. That may require a different approach at times
Culture (trigger words)

- Trigger words or names: these statements could be inflammatory in certain regions

- “You have to make sure you aren’t doing business with terrorists or bad actors in this region”
- “You can’t do business with Iran or Iranians”
- “There are lots of narcotics organizations in Colombia and you must screen for them”
- Plain old “You” (vs. “We”)

Culture (trigger words)

- “We have a legal obligation to comply with the United Nations sanctions, along with any unilateral ones in the countries where we operate”

- Focus on legal aspect, and our obligation, but...
- If the question of “why” comes up, be prepared to give an answer
- (Don’t say “Why is Cuba sanctioned? Just because – that’s why”)
- Have some examples that hit home, if possible
Culture (trigger words)

- Example I have used in the past

Culture (political views)

- Be prepared that some employees may disagree with a rule for political reasons
- Example: disagreement whether Cuba should be sanctioned, or if Israel should be boycotted
- Remember: they may have a right to disagree publicly!
Culture (political views)

- Your origination likely allows public discussion of policy, but...
- Do NOT allow discussion of political merits of policy in your training sessions
- Compliance is compliance: employees can advocate to change policy on their own time
- You are not there to argue for trade rules: merely to assist with and assure compliance with those rules

Photo from: https://themilitant.com/2019/05/18/us-hands-off-venezuela-us-hands-off-cuba/
Culture
(Sovereignty)

- Be especially sensitive to the USA extraterritorial issue and local sovereignty but applies to any similar situation
- A message of "you're now owned by a US company, and you have to do things our way!" will not get the buy-in you need
- Consider a non-US trainer (I have had interesting responses as a Canadian)

- This does not mean that you belittle or treat negatively the US rules, merely that you take a sensitive approach

Regulatory differences

- "Blocking" legislation
- (Just because our jobs aren't hard enough as it is)
Regulatory differences

- Navigating the differences can be tricky
- Review historical enforcement (or lack of), along with potential penalties
- Sometimes it boils down to: “who are you more afraid of?”

Regulatory differences

- Anti-boycott
  - The Arab League boycott of Israel vs. The US Anti-boycott regulations
Regulatory differences

- What other differences have I encountered?
- Disagreement over country of origin
- Different rules for marking of origin ("made in USA" for example)
- Tariff classifications (see next slide)

Regulatory differences

- 38.24.40 means "Prepared additives for cements, mortars or concretes"
- India has chosen to add this line below 38.24.40:

  - Most other countries only interpret 38.24.40 to include items added to concrete at the time of mixture, NOT items poured over top of cured concrete
Thank you!

Questions?