The Importance of Supply Chain Compliance

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March 2, 2018

“The supply chain is where risk becomes most probable and most damaging. If there is a disaster looking for a place to happen, the supply chain seems an obvious candidate.”

Robert Malone, Forbes
Nov. 15, 2006
Supply Chain Compliance Issues:

- Human Trafficking
- Child Labor
- Worker Health & Safety
- Environment
- Conflict Minerals
- Trade Agreements
- Trade Sanctions
- Corruption

Human Trafficking & Child Labor

- **Tariff Act of 1930** (19 USC § 1307) – Prohibits importing goods made with forced labor or indentured child labor.

- **Trade Facilitation & Trade Enforcement Act of 2015** - Eliminated the Tariff Act’s “consumptive demand” exception.

- **19 C.F.R. 12.42** – Authorizes CBP to detain and prevent importation of goods reasonably believed to fall within Tariff Act prohibitions.
Human Trafficking & Child Labor

- **Executive Order 13126** (1999) – Prohibits government procurement of goods made with forced labor or indentured child labor.
  - Requires contractors to certify good faith efforts to determine whether forced or child labor was used for certain products.

- **Executive Order 13627** (2012) – Required FAR amendments (effective 2015), strengthening prohibitions against trafficking in federal contractor supply chains.
  - Contractors with OUS work over $500K must certify they have implemented anti-trafficking compliance programs.

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Human Trafficking & Child Labor

  - Up to 20 years in prison (or life in cases of kidnapping, sex abuse or death).

- **18 U.S.C. § 1593A** – “Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.”

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Worker Health & Safety


- **ISO 45001** – New international standard; scheduled to replace OHSAS 18001 in March 2018.

- **Procurement Labor Statutes** (Davis-Bacon, Contract Work Hours & Safety Standards Act, Walsh-Healy Public Contracts Act, etc.): Establish a web of labor protections applicable to contractors, subcontractors and suppliers on government contracts.
Environment

- **Toxic Substances Control Act of 1976** (15 U.S.C. § 2601): Prohibits importing, processing, or manufacturing certain chemicals (e.g., PCBs, lead, mercury).

- **EU REACH Regulations** (EC 1907/2006): Require EU manufacturers to register the chemicals in their products and demonstrate safety.
  - Does not apply directly to U.S. companies, but importers for U.S. manufacturers must register.

- **EU RoHS Regulations** (Directive 2002/95/EC): Impose restrictions on hazardous substances found in electronic products and components.
Conflict Minerals

- **Dodd-Frank Act of 2010** (15 U.S.C. § 78m(p)):
  - Requires publicly-traded companies to audit their supply chains and report the country of origin of any tantalum, tin, tungsten or gold.

- **17 C.F.R. 240.13p-1 and 17 C.F.R. 249b.400**: Implement the Dodd-Frank conflict minerals reporting requirements. State that:
  - If minerals are from the DRC or an adjoining country, due diligence on source and chain of custody of the minerals is required.
  - That a company is not “DRC conflict-free” must be reported to the SEC and published on the company’s website.
Trade Agreements

- **Tariff Act of 1930** (19 USC § 1304) – Requires imports to be marked with their country of origin.


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Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, August 19, 2014

Samsung Electronics America Agrees to Pay $2.3 Million to Resolve False Claims Act Allegations

Samsung Electronics America Inc. (Samsung) has agreed to pay $2.3 million to resolve allegations that it caused the submission of false claims for products sold on General Service Administration (GSA) Multiple Award Schedule (MAS) contracts in violation of the Trade Agreements Act of 1979 (TAA), the Justice Department announced today. Samsung is an electronics distributor and marketer headquartered in Ridgefield Park, New Jersey.

“The Department of Justice is committed to protecting public funds and guarding against abuse of federal procurement programs,” said Assistant Attorney General Stuart F. Delery for the Justice Department’s Civil Division. “This settlement upholds important trade priorities by ensuring that the United States only uses its buying power to purchase from countries that trade fairly with us.”
Trade Sanctions

- Office of Foreign Assets Control (OFAC) Regulations (31 C.F.R. 500, et seq.) - Prohibit or restrict U.S. companies from doing business with:
  - Embargoed nations, nationals of embargoed nations, or listed persons in economically sanctioned territories (e.g., Cuba, Iran, Syria, Ukraine); or
  - Specially designated nationals & blocked persons (e.g., drug cartels, terrorists, other international criminal organizations, and banks and agencies of embargoed countries).

Corruption

  - Prohibits direct or indirect corrupt payments of anything of value to foreign officials to obtain or retain any improper business advantage.
  - Requires “issuers” to keep accurate books and records and maintain effective systems of internal accounting controls.
  - Creates liability for knowing (or willfully blind) payments through third party distributors, suppliers, consultants or agents.
FOR IMMEDIATE RELEASE

Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than $156 Million in Criminal Penalties

SEC and Companies Agree to Civil Disgorgement and Penalties of Approximately $80 Million

WASHINGTON – A global freight forwarding company, as well as five oil and gas service companies and subsidiaries, have all agreed to resolve investigations of Foreign Corrupt Practices Act (FCPA) violations, the Department of Justice and U.S. Securities and Exchange Commission (SEC) announced today. The companies have agreed to pay a total of $156,695,000 in criminal penalties. Additionally, the SEC announced its settlements with these companies, which involve civil disgorgement, interest and penalties totaling approximately $80 million. The matters stem from an investigation that focused on allegations of foreign bribery in the oil field services industry.

In documents filed in U.S. District Court for the Southern District of Texas, Panalpina World Transport (Holding) Ltd., a global freight forwarding and logistics services firm based in Basel, Switzerland, and its U.S.-based subsidiary, Panalpina Inc., admitted that the companies, through subsidiaries and affiliates (collectively "Panalpina"), engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry. They did so in order to circumvent local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions. Panalpina admitted that between 2002 and 2007, it paid thousands of bribes totaling at least $27 million to foreign officials in at least seven countries, including Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan. Also today, Panalpina’s customers, including Shell Nigeria Exploration and Production Company Ltd. (SNEPCO), Transocean Inc. and Tidewater Marine International Inc., admitted that the companies approved of or condoned the payment of bribes on their behalf in Nigeria and falsely recorded the bribe payments made on their behalf as legitimate business expenses in their corporate books, records and accounts.

Resources
International Child Labor & Forced Labor Reports

ILAB publishes three reports on international child labor and forced labor that serve as valuable resources for research, advocacy, government action and corporate responsibility. These reports are: The Department of Labor’s Findings on the Worst Forms of Child Labor; the List of Goods Produced by Child Labor or Forced Labor; and the List of Products Produced by Forced or Indentured Child Labor. Each of these reports has a distinct mandate, focus and set of implications, but taken collectively, they document the current situation of child labor, forced labor and forced child labor around the world.

Findings on the Worst Forms of Child Labor
List of Goods Produced by Child Labor or Forced Labor
Executive Order 13120 List of Products

Prevaling wage requirements of various laws applicable to government contracts are enforced by the Wage & Hour Division.

The Davis-Bacon and Related Acts (DBRA) require payment of prevailing wages to laborers and mechanics employed on federal and federally-assisted construction projects.

The McNamarra-Byrns Service Contract Act requires payment of prevailing wage rates and fringe benefits to service employees employed on contracts to provide services to the federal government.

The Contract Work-Hours and Safety Standards Act (CWHSSA) requires contractors and subcontractors on federal contracts to pay laborers and mechanics at least one and one half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, and dangerous working conditions in the construction industry on federal and federally-financed and assisted projects.

The Copeland Anti-Kickback Act prohibits a contractor or subcontractor from inducing an employee to give up any part of his/her compensation to which he/she is entitled under the contract of employment. The Act’s implementing regulations require a contractor and subcontractor to submit a weekly statement of the wages paid each employee performing covered work during the preceding pay period.

The Walsh-Healey Public Contracts Act requires payment of minimum wage rates and overtime pay on federal contracts to manufacture or furnish materials, supplies, or equipment.
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The Importance of Supply Chain Compliance
March 2, 2018
Cargill’s Palm Oil Supply Chain

Cargill operates a global palm oil supply chain with physical assets in the form of plantations, mills and refineries. As a trader of major commodities around the globe, our key activity in the palm oil supply chain is through trading markets where we source from third party mill suppliers. We also purchase sustainable palm oil indirectly from independent smallholder farmers.

Mitigating Supply Chain Compliance Risks

- **Prevent**: Reduce the risk of misconduct
- **Detect**: Increase likelihood of identifying misconduct
- **Respond**: Manage the responsible handling of misconduct
Assessing Supply Chain Risks

<table>
<thead>
<tr>
<th>LIKELIHOOD</th>
<th>IMPACT</th>
<th>CONTROL EFFECTIVENESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business profile</td>
<td>Financial</td>
<td>People</td>
</tr>
<tr>
<td>• Products and industries</td>
<td>• Regulatory penalties and fines</td>
<td>• Clear accountabilities</td>
</tr>
<tr>
<td>• Geographies</td>
<td>• Legal damages and costs</td>
<td>• Staffing and experience for critical roles</td>
</tr>
<tr>
<td>• Internal structure (org complexity, 3rd party use)</td>
<td>• Operational losses</td>
<td></td>
</tr>
<tr>
<td>Regulatory environment</td>
<td>Reputational</td>
<td>Policies and training</td>
</tr>
<tr>
<td>• Complexity</td>
<td>• Customer attrition or harm</td>
<td>• Policies and procedures</td>
</tr>
<tr>
<td>• Significant trends</td>
<td>• Societal concerns (NGO's, consumer groups, govts)</td>
<td>• Training</td>
</tr>
<tr>
<td>• Level of enforcement</td>
<td>• Operational</td>
<td>Technology</td>
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<tr>
<td></td>
<td>• Business disruption</td>
<td>• Extent to which technology is used to manage compliance</td>
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<tr>
<td></td>
<td>• Injury to employees or third parties</td>
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<tr>
<td></td>
<td></td>
<td>Verification</td>
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<td></td>
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<td>• Activities for ongoing oversight of controls</td>
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</tbody>
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Example of Supply Chain Risk Map
Mitigating Supply Chain Compliance Risks

**Prevent**
Reduce the risk of misconduct

**Detect**
Increase likelihood of identifying misconduct

**Respond**
Manage the responsible handling of misconduct

Supply Chain Due Diligence

- Designated by Business or Partner
- Specific categories of Partners (e.g., customers, third parties, etc.)
- Identify high, low, and medium partner
- Define additional requirements for each
- Define who has decision rights
- Develop escalation protocols for disputes
- Questionnaires
- Screening
- Compliance certification
- Examples: Training, compliance certifications, audit rights.
- Real time notifications of potential issues with current Partners
Mitigating Supply Chain Compliance Risks

Prevent
Reduce the risk of misconduct

Detect
Increase likelihood of identifying misconduct

Respond
Manage the responsible handling of misconduct

Supply Chain Policies and Procedures

Global Ethics & Compliance

About the Supplier Code

Cargill’s purpose is to nourish the world in a safe, responsible, and sustainable way. We understand that supply chains that support the global food system must be sustainable—balancing the needs of today with the needs of future generations. We can achieve our purpose only by working closely with our Supplier Partners. Our Supplier Code of Conduct explains how we expect farmers, producers, manufacturers, and others to work with us to fulfill that purpose—ethically and in compliance with applicable laws.

What is a supplier code of conduct?
A. A supplier code of code-outlines basic expectations and requirements for businesses providing goods and services. They generally cover topics like legal compliance, keeping accurate records, anti-bribery, fair competition, human rights, labor issues, and environmental and worker safety concerns.

Supplier Code 2-Page Brochure

- Arabic
- Chinese
- Dutch
- English
- French
- German
- Hungarian
- Indonesian
- Italian
- Japanese
- Spanish
Mitigating Supply Chain Compliance Risks

Prevent
Reduce the risk of misconduct

Detect
Increase likelihood of identifying misconduct

Respond
Manage the responsible handling of misconduct

Detecting Supply Chain Compliance Risks
Anti-Bribery Example

Internal Audit Rating

Use of Third Parties

Country Corruption Risk

Risk
Mitigating Supply Chain Compliance Risks

- **Prevent**: Reduce the risk of misconduct
- **Detect**: Increase likelihood of identifying misconduct
- **Respond**: Manage the responsible handling of misconduct

Presented by Jeff Johnson
Cargill Global Ethics & Compliance
Office