The Importance of Supply Chain Compliance

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"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.

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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.”
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.


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.
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Cargill’s Palm Oil Supply Chain

Mitigating Supply Chain Compliance Risks

Assessing Supply Chain Risks
Example of Supply Chain Risk Map

Mitigating Supply Chain Compliance Risks

Supply Chain Due Diligence

- Designated by Business
- Identify high, low, and moderate risks
- Designate responsibilities for re-suppliers
- Ensure due diligence protocols are aligned
- Conduct periodic reviews
- Develop escalation protocols
- Address risks for suppliers and contracts
- Maintain transparency in due diligence processes
- 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

What is a supplier code of conduct?

- A company's code of conduct provides a framework for business activities involving supplies, ensuring ethical and legal compliance.

Mitigating Supply Chain Compliance Risks
Detecting Supply Chain Compliance Risks
Anti-Bribery Example

Risk

Use of Third Parties

Country Corruption

Internal Audit

Rating

Increase likelihood of identifying misconduct

Respond

Manage the responsible handling of misconduct

Prevent

Reduce the risk of misconduct

Mitigating Supply Chain Compliance Risks

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