

Know what's cooking

Fortified export compliance programs are shippers' recipe to keep outbound cargo in check with control regulations.

BY CHRIS GILLIS

Exporting products abroad requires American shippers to comply with a myriad of federal regulations. Failure to do so could lead to stiff fines, revocation of export privileges, negative publicity, and even jail time for executives.

Many companies — large and small — aren't taking any chances, and have placed export controls at the forefront of their regulatory compliance efforts.

"It's my job to keep my company on the business page and off the front page," said Luke Alexander, director of global trade compliance for Hitachi Data Systems, in Santa Clara, Calif.

Hitachi's product order system flags all shipments with possible export concerns. Alexander and three co-workers must carefully evaluate the compliance of each shipment before releasing them for export.

"It can be stressful," Alexander said. "I've known people who have gotten out of the business because they couldn't stand to make decisions about exports and still sleep comfortably at night."

Unlike import regulations, the imposi-



tion of export controls is more often subject to the continuously changing currents in Washington politics and relations with other countries.

The federal government has stepped up its export enforcement since the Sept. 11, 2001 terrorist attacks in New York and Washington. A big concern for regulatory authorities, particularly in the Commerce Department's Bureau of Industry and Security and the State Department's Directorate of Defense Trade Controls, are "dual-use" items, or goods with both commercial and military applications, which could end up in the hands of rogue nations, terrorist organizations, or proliferators of nuclear,

biological and chemical weapons.

The corporate view toward export compliance has also been enhanced in recent years by two pieces of legislation: the Security Assistance Act and Sarbanes-Oxley Act, both passed by Congress in 2002. The Security Assistance Act requires all export information to be filed to the government through the Automated Export System (AES), and significantly raises both civil and criminal penalties for non-compliance. The Sarbanes-Oxley Act requires companies to audit their internal controls and report the results to investors.

In addition, companies must take into account a number of international trade control treaties, which the United States is a party, such as the Chemical Weapons Convention and Wassenaar Arrangement (for conventional weapons).

However, exporters are advised not to get lulled into a sense of security just because their products aren't high-tech. "Essentially anyone involved in international trade is subject to export regulations," said Paul DiVecchio, president of DiVecchio & Associates, a Boston-based firm specializing in export compliance consulting.

Shortly after the first Gulf War, United Nations inspectors discovered that the Iraqi government had acquired industrial bakery equipment to mix biological and chemical weapons agents. "This is why you better know to whom your products are going," DiVecchio said.

Raising The Bar. The United States has maintained strict export controls since the inception of the Cold War in the late 1940s. At that time, it was the goal of the country to keep American-made technologies out of the hands of the Soviets and their allies.

Since the Cold War enemies were known, companies had an easier time knowing to whom they could ship. Today's adversaries are not so well defined by country or regional borders, posing great logistics challenges to American shippers.

"The old days of sticking export compliance in the traffic or manufacturing depart-

ments are over," DiVecchio said.

"The key to success for any compliance program today is executive commitment," he added. "If you don't have that, it just won't work."

"After 9/11, people have made a better effort to understand export regulations," said Barbara Clements, import/export manager for Fisher Scientific, based in Pittsburgh. "America's corporate culture is changing, but it's still a struggle."



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DiVecchio
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The larger a company's overseas operations the more resources it's expected to devote to export management and compliance.

Hitachi, for example, spends about \$1 million a year on its export compliance program. "I've worked at other companies where revenues were more important than export compliance," said Alexander, who has about 25 years experience with export management. "At Hitachi, they put export compliance ahead of revenues."

Clements said she still teaches basically the same export compliance course to Fisher Scientific's employees that she did before 9/11. In addition to the basic export aspects of classification, valuation and documentation, she tells her staff to ask themselves four questions:

- What's the product?
- What's the country of ultimate destination?
- Who is the end user?
- What is the intended end use?

"These questions hold everything," Clements said.

Exporters are also encouraged to stay current on Commerce and State department export policy and procedural changes. Most of this information is available on the department Web sites (www.bis.doc.gov and www.pmdtc.org).



Menefee

"The most important thing for your compliance program is not how much it costs, or how pretty it looks," said Mark Menefee, counsel for Washington law firm

Export compliance program essentials

Key components:

- Is there export compliance awareness?
- Attitude — executive commitment?
- Is there a formal compliance program?
- Is there an organizational reporting structure?
- Is there global compliance (United States and overseas affiliates)?

Specific components:

- Corporate commitment
- Order flow (to determine compliance checks and balances)
- End user/end use knowledge
- Product classifications

- Technical data transfer
- Denied party screening
- License decisions
- Policies/procedures
- Record keeping
- Freight forwarder compliance
- Drop ship (purchase domestic with intent to export)
- Acquisitions of other firms
- Joint ventures
- Sales/marketing
- Anti-foreign corrupt practices
- Credit department
- Antiboycott
- Training
- Compliance assessments

Source: DiVecchio & Associates.

Baker & McKenzie, and former director of BIS's Office of Export Enforcement. "Your compliance program has to become an integral part of how your company will do business."

Menefee said companies are still particularly vulnerable to compliance breakdowns in the areas of AES data accuracy and management of the responses by distribution networks to inquiries from Iran and from Chinese military end users.

"Even good compliance programs can break down during times of transition in corporate management, for example, when companies or divisions are bought and sold," Menefee warned.

There is always the potential for renegade employees to cut illegal export deals with restricted parties, or to be simply careless with corporate export policies and procedures.

"I don't think there's an easy answer to this," DiVecchio said. "You simply must communicate globally that all employees will be held personally liable if they violate the corporate export policy."

"I tell our people when you protect yourself as an employee you protect the company," Clements said.

Outside Help. To help with compliance, there are a number of systems and informa-

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tion providers on the market, such as M.K. Data Services, OCR, NextLinX, J.P. Morgan Vastera, and Global Trade Services.

Each of these firms provides exporters various levels of compliance services, which they can mesh with their corporate computer programs. M.K. Data Services, for instance, provides comprehensive lists of denied parties, or companies that require an extra level of scrutiny, whereas Vastera provides a suite of export controls.

Compliance systems and information providers are noticing an upswing in corporate interest in their products and services.

"We have traditionally dealt with high-tech firms on dual-use and defense-related items," said Ken Harris, managing partner of M.K. Data Services.



Harris

"Because of the Patriot Act and other post 9/11 security legislation, the entire business universe is a potential client for us."

Harris said some of M.K. Data Services' newest clients include global restaurant and retail chains, such as McDonald's and The Limited. "We just wouldn't have seen these companies coming to us 10 years ago," he said.

Many companies are also hiring outside consultants and attorneys to assist with their export compliance efforts. But even these experts recommend that companies don't outsource the entire function to a third party.

"If you determine your products might be controlled or your company markets and customers might give rise to export control concerns, you definitely should contact a consultant or attorney," Menefee said.

"But by far most of this work must be done by a company through its internal efforts," he said. "You can't just buy a nice compliance program, no matter how much you pay for it, and expect it to magically protect your company. You have to internalize and live the program." ■

Essential denied, restricted party lists

- Commerce Department Denied Parties List
- Commerce Department Entity End-User Requiring License (ERL)
- Commerce Department Unverified List
- Treasury Department Specially Designated Nationals and Vessels of Cuba, Iraq, Iran, Liberia, North Korea, Sudan, Western Balkans, and Zimbabwe
- Treasury Department Specially Designated Terrorists
- Treasury Department Specially Designated Global Terrorists
- Treasury Department Specially Designated Narcotic Traffickers
- Treasury Department Weapons of Mass Destruction Proliferators
- State Department Debarred List
- State Department Missile Proliferators

- State Department Chemical and Biological Weapons Proliferators
- State Department Designated Terrorist Organizations
- Government Services Administration Debarred Bidders List (Reciprocal, Non-procurement, and Procurement)
- German Proliferation Concerns
- United Kingdom Proliferation Concerns
- Japan — Ministry of Economy, Trade and Industry List
- United Nations Security Council Sanctions
- European Union Sanctions List
- Bank of England — Financial Sanctions
- Canadian Restricted Entities
- World Bank — List of Debarred/Ineligible Firms

Source: M.K. Data Services.