

# Export compliance hot seat

*American shippers expect assurances from forwarders to do what's right.*

By CHRIS GILLIS

**F**or an increasing number of shippers, the freight forwarding industry's compliance with U.S. export controls has become just as important as how the cargo is shipped.

More often today shippers are spelling out export compliance requirements to their forwarders. Failure to meet these requirements means lost business to the forwarder.

"Whether it be by written agreement or a general understanding, exporters expect their forwarding partners to act as their last line of defense prior to an actual export taking place," said Joseph R. Meunier, general manager of Holbrook, Mass.-based New England Groupage and director of the National Customs Brokers and Forwarders Association of America's Northeast region

(excluding New York and New Jersey).

Large American shippers have had a longer tradition of expending resources to ensure they're compliant with export controls. However, recent corporate governance legislation and increased federal oversight of exports has put shippers of all size on notice.

"No longer is it just the large exporters making compliance a corporate philosophy," Meunier said. "The same trend is spreading out through the small and medium size exporters as well."

In 2002, Congress and the Bush administration raised the emphasis on export controls by passing two pieces of legislation:

- The Security Assistance Act requires all export information to be electronically filed to the government through the Au-

tomated Export System, 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.

The passage of an amendment to the Patriot Act has increased penalties from \$10,000 per charge per violation to \$50,000 for all Commerce Department violations committed since March 19.

"The stakes have been raised," said Michael Ford, vice president of regulatory compliance and quality for Philadelphia-based forwarder BDP International, and the trade co-chairman for the outbound component of the Trade Support Network, which advises the federal government on the development of its Automated Commercial Environment. "You want to make sure your ducks are in line."

**In Writing.** While forwarders may be subject to regulatory action, most of the burden for export compliance still falls on the shoulders of the shipper. The result could be hefty fines, damaging publicity and revocation of export privileges.

"Understanding and adhering to export control regulatory requirements is essential for exporters to maintain export privileges and achieve growth in the global economy," said Paul DiVecchio, president of DiVecchio & Associates, a Boston-based consulting firm that specializes in export control issues. "Personnel responsible for export transactions must be able to understand and comply with applicable export regulations."

The Commerce Department's Bureau of Industry and Security, with help from the Homeland Security Department's Customs and Border Protection and the State Department's Office of Defense Trade Controls, is responsible for monitoring U.S. exports. These agencies are particularly concerned about the movement of "dual use" items, or goods with both commercial and military applications, which could end up in the hands of rogue nations, terrorist organizations, and proliferators of nuclear, biological and chemical weapons.

The shift from paper shipper's export declarations to electronic filings in AES in recent years has sharpened the ability of export enforcement agencies to target wrongdoers. That ability should increase further once the government institutes mandatory AES filing procedures.

DiVecchio said export compliance is a two-way street that requires a collaborative effort between the exporter and forwarder. "There's a need for both parties to have clear lines of accountability," he said.

He added this further drives home the

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need for shippers to provide their export data filing requirements to forwarders in writing. “I strongly recommend that the exporter initiate a letter of engagement regarding export compliance with every forwarder they conduct business with,” he said.

DiVecchio said this one-time memo should include the following “compliance principles:”

- The forwarder will neither change nor substitute information or documentation without the exporter’s approval.
- The forwarder will review all exporter’s transactions for completeness and discrepancies, and should hold a shipment and notify the exporter’s point of contact until the discrepancies are resolved.
- The forwarder must provide a printout of all AES submissions made on behalf of the exporter upon request.
- The forwarder will indemnify the exporter for any penalties that are incurred as a result of the forwarder’s non-compliance to this agreement or negligence in compliance with the export regulations.

Ford said it’s important for forwarders to have the authority from the exporter to “pause” a shipment if information is found to be incomplete. The use of approximate weights, values and other information used in an export declaration could be viewed by regulatory agencies as false statements if the cargo has already left the country, he warned.

One of the biggest challenges to export compliance programs is dealing with “routed” shipments, or cargo handled by a forwarder designated by the overseas importer. These forwarders may not be cooperative, and even after sending explicit

instructions exporters worry whether their information will be filed correctly to the U.S. government.

“We struggle with this a lot,” said Brian Amero, corporate trade compliance manager for Teradyne, a Boston-based semiconductor test manufacturer. “In cases where we are able to pick a forwarder things go much better.”

Teradyne’s management is considering filing its own export declarations through AES, instead of letting contracted or routed shipment forwarders enter this data. “This would provide us with full visibility of information for all shipments we control and routed transactions,” Amero said.

**Marketing Tool.** Export compliance specialists believe forwarders can do a better job promoting their export compliance expertise and services to shippers.

“While many companies in the forwarding community take their role very seriously, there are still many who handle routed and non-routed cargo without any respect for the liability they share on behalf of the principal party in interest,” Meunier said.

“This should be looked upon in the forwarding community as an opportunity for those companies who have good compliance programs in place to convince exporters to take greater control of their export transactions and utilize their services,” he added.

For example, in addition to measuring its own compliance and staying on top of regulatory changes, Ford said BDP often helps its shipper clients ensure their written procedures and policies include export compliance measures.

“For those transport providers that may lack confidence in their export compliance programs and want to improve their in-house procedures there are many opportunities to do so,” Meunier said. “The easiest and least expensive way to achieve this goal is to actively participate in local forwarding and customs brokerage organizations as well as the NCBFAA.”

In the Boston area, the Massachusetts Export Center provides both shippers and forwarders with export counseling and technical assistance, international market research and export training programs. Its next export seminar will be held on Nov. 3.

At the national level, the NCBFAA’s Educational Institute gives member companies the opportunity to have their employees certified in various aspects of the forwarding business, including export controls.

BIS offers an update conference in Washington each October to provide the export industry with the latest details about regulatory changes impacting compliance.

This also helps shippers and forwarders make contacts within the federal agencies that impose export controls.

“Get engaged,” DiVecchio tells his industry clients. “Determine which agencies impact your licensing and compliance requirements, determine the appropriate contacts, and establish rapport and a trust relationship.”

“Transportation providers need to take better advantage of these educational opportunities to keep pace with knowledge exporters are gaining through similar organizations and activities,” Meunier said. “Those that do will have a sales opportunity far greater than the traditional rates and services routinely offered by their competition.” ■