

How to Get Senior Leadership Invested in Export Compliance

Get anchored before you set sail!

Do you ever imagine it's just the two of you, alone on a tropical island? Just the two of you relaxing under a palm tree, basking in the warmth of the sun. Just the two of you, together at last; just you and your beloved set of export regulations.

As your company's compliance officer, you live, breathe, and even daydream (although probably not quite so vividly) about those regulations. It's in your blood. Unfortunately, it's rarely a sentiment shared company-wide. Instead of feeling your toes in the sand, you may feel as though your cubicle has been set adrift with nothing but the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR) to guide the way. You have the knowledge, experience and skill to steer your company around those export reform buoys, but you lack the support of your senior leadership to drive the boat. In a whole-hearted effort to keep management in the loop, you've tirelessly forwarded countless emails about changes due to export reforms, attempted to demonstrate the inadequacies of your software, and begged them to budget additional funding for your compliance program. Despite your best endeavors, management has only responded with their usual:

"We can't afford it."

"This doesn't benefit the bottom line."

"Show me the money!"

If you've tried the soft sell by asking for help and explaining the importance of what you do, it might be time to fire some more strategic shots across the bow. Be assured that you aren't alone anymore. Let's roll up our sleeves and swab this deck.



First of all, the government is here to help. Now I know you may scoff; but if they are the policy makers and enforcers, then who better to draw on for inspiration to convince management?

If you sell ITAR goods

In prepping your appeal, if you are under the jurisdiction of the ITAR, you can do no better for a qualified reference than the U.S. Department of State, which considers an effective compliance program as one that includes written documentation of who in management is directly involved in export controls and senior management's commitment to comply with the Arms Export Control Act and ITAR.¹ In other words, your company must have compliant, committed leadership. Use this premise to remind management that they too must have a stake in your compliance program. Then, just to bring home the seriousness of what you are telling them, you may want to reiterate the Department of State's stance on the need to emphasize compliance throughout an organization "to avoid jeopardizing corporate business and severe sanction against the corporation and responsible individuals."²

While you are pointing this out, shore up some gangplank-worthy facts from Violations and Penalties, 22 CFR § 127 (2016), quoting that everything—from an honest misrepresentation of an export's value to a willful act of misconduct—can lead to penalties, debarments and consent agreements. Now there's some help from the government you really don't want.

If you sell EAR goods

Of course, you may not have any military goods or services; and instead, your items fall under the EAR. If you're in this boat, relate to your leadership that, according to the Bureau of Industry and Security (BIS), which has jurisdiction over EAR regulated goods, "management commitment" is the first element you need in order to build an effective export compliance program.³ In addition, make sure to mention the BIS declares "maintaining a program for handling compliance problems, including reporting export violations" as equally necessary.⁴

For some added cannon-fire, explain to management the incentives of maintaining a standard level of export compliance, such as avoiding 20 years imprisonment and, in some cases, a \$1 million penalty per violation.⁵ Remember, your company is in business to make money. Likewise, your leadership is bound to take interest in any mention of the bottom line being affected.

Pull the wind from their sails with a self-audit

Do you think you need more help in convincing management to pay attention to the gravity of adhering to export control laws? Why not steal another bullet from the best practices of an effective compliance program and perform a self-audit?

See what the results produce, where your company is performing well and where water might be trickling in unnoticed.

If Customs and Border Protection knocked on your door to conduct an audit, they would ask for five years of transaction documents. While this depth of analysis would be the most accurate picture of your company's adherence to regulations, you may not have enough time to take such a prolonged plunge through your records. If that's the case, then dive into at least a full year's worth of documents and remember what your goal is—procuring those precious resources.

What (and how) to present to your leadership

Your management may not understand the intricacies of the law as you do; after all, they hired you to do that job. Believe it or not, there are some simple things you can do to improve your chances of winning over their hearts and minds. Here are a few tips to consider when preparing to make your case to the c-suite.

- ✓ List the export rules, regulations or compliance program elements (in simple terms) as demanded or highly recommended by the government. Then counter them with your audit results.
- ✓ Think about how your audit results could hit the company's bottom line. What might happen in the way of fines and penalties per issue or incident? Tally up the potential fines.
- ✓ Remind management that export reform has taken place and quantify the number of hours needed to incorporate those changes into the company's daily/monthly/quarterly activities.
- ✓ List every regulation (in simple terms) you cannot adhere to because of inadequate staffing, software, resources, etc.
- ✓ Include charts, graphs and statistics in your presentation. Be more visual and less wordy.

If you find yourself bailing seepage with buckets, or worse—you can't even identify the source of the leaks—then it may be best to ask someone outside the company to conduct a gap analysis. Reach out and anchor yourself to an impartial, experienced specialist. Consultants can not only help you find the holes, but can also guide you through building new processes and procedures that you and your leadership will be proud to call your own.

Footnotes

- [1] Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, "Compliance Program Guidelines" retrieved 21 January 2016 from www.pmdtcc.state.gov/compliance/documents/compliance_programs.pdf.
- [2] Ibid.
- [3] Bureau of Industry and Security, U.S. Department of Commerce, "Core Elements of an Effective Export Management and Compliance Program (EMCP)" retrieved 20 January 2016 from www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/24-compliance-a-training/export-management-a-compliance/227-core-elements-of-an-effective-export-management-and-compliance-program-emcp.
- [4] Ibid.
- [5] Violations of the Export Administration Act (EAA) of 1979, as amended, 50 USC App. §§ 2401-2420 (2000), and the Export Administration Regulations, 15 CFR Parts 730-774 (2007), may be subject to both criminal and administrative penalties. When the EAA is in effect, criminal penalties can reach up to 20 years imprisonment and \$1 million per violation. In cases involving item controlled for national security reasons, administrative penalties can reach \$11,000 to \$120,000 per violation. When the EAA is in lapse, the criminal and administrative penalties are set forth in the International Emergency Economic Powers Act.

SUE K. NANS—Senior Trade Advisor

MOHAWK GLOBAL TRADE ADVISORS helps companies understand and implement export control policies and procedures through gap analysis, compliance program development, and on-site staff training.

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