

Three Essential Hallmarks of Effective In-House Trade Compliance Professionals

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Introduction

To describe its bold vision of global commerce, my employer proclaims that “every business is now a digital business.” Indeed, in this increasingly interconnected and interdependent world, geographic lines are blurred as information and technology travel around the globe instantaneously at the click of a mouse.

Against this backdrop, it is more challenging than ever to comply with export control laws, economic sanctions, and other legal requirements that impose restrictions on the worldwide

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transfer of goods, technology, and services. For enterprises with any international dimension, the value of having in place an effective global trade compliance program is hard to dispute. That such a program can only succeed with the commitment of senior management and the dedication of adequate resources is well-established.

There is a wealth of commonly accepted wisdom on what constitute best practices of an effective global trade compliance program. Furthermore, there is little disagreement that a compliance program is only as good as the people who run it.

How do you become an effective in-house trade compliance professional? Beyond objective

criteria for assessing technical competency, there is considerable room for subjective judgment. Following are some admittedly subjective views on three essential qualities of an excellent in-house professional when it comes to trade compliance, based on more than two decades of anecdotal experience and observation.

Three Essential Hallmarks of Effective In-House Trade Compliance Professionals

Turning Square Corners

Supreme Court Justice Oliver Wendell Holmes Jr. once said that “men must turn square corners when they deal with the Government.” This maxim resonates on multiple levels. It is both an admonition that all formalities must be followed to the letter when dealing with regulatory authorities, as well as a requirement that one acts with probity in matters involving the public trust.

Export controls, economic sanctions, and related legal requirements advance vital government interests, especially national security and foreign policy imperatives. Accordingly, the consequences for even technical lapses can be serious to deter careless behavior, while the penalties for willful misconduct go all the way up to imprisonment of individual wrongdoers and the outright denial of international trading privileges for companies held to breach these laws. As a practical matter, it is important to earn and hold the trust and confidence of regulatory agencies to secure necessary licenses and registrations with dispatch, as well as to create the conditions for the most favorable treatment when lapses and violations do occur, as invariably they will even with the most rigorous controls in place.

Effective trade compliance professionals recognize that there is simply no substitute for acting with unwavering integrity, transparency, and competency, and they never cut corners because of business pressures.

Commercially Sensitive

Nevertheless, if there is one quality that separates the uncommonly great from the merely good, it is commercial sensitivity, which is the

recognition that compliance is an integral part of the business process that should never hinder an enterprise from achieving its lawful objectives. In fact, when integrated in an optimal manner, effective compliance reduces drag by allowing the enterprise to operate with greater confidence that its activities will not spawn undue legal, financial, operational, or reputational risks.

All too often, the well-intended compliance professional is considered an impediment to doing business. And all too often, there is a grain of truth in this perception. Relevant regulatory requirements are incredibly dense and daunting, and it can be tempting to elevate form over substance, or simply discourage otherwise lawful activities because of hypersensitivity to the various risks. Often the risks are genuine, but can be managed with care. This requires waging a campaign on multiple fronts.

First, effective trade compliance professionals follow a never-ending quest to attain subject matter mastery. The best of the breed hone their skills through continuous training and professional reading. They share knowledge with peers, especially the unwritten “tribal wisdom” that can only be attained through constant interaction with government officials and participation in trade compliance associations and seminars. They rely on expert legal advisers and consultants to help guide them through the thorniest issues, and they preserve and reuse the knowledge they learn from these resources. Through this endless pursuit of competency, they are best prepared to seek creative solutions to complex problems.

Second, superior trade compliance professionals understand and successfully demonstrate to their management and colleagues that effective compliance provides a competitive advantage by reducing the probability of violations and their attendant negative consequences. This requires investing the time to understand your enterprise, what it does, and what it hopes to achieve. If you are not trying to help your enterprise achieve its lawful business objectives, you are not doing your job. If you are earnestly helping, but no one appreciates that fact, you still are not doing your job.

In this connection, the very best compliance professionals are excellent communicators, and are always able to articulate the value proposition of effective compliance at every level, from the factory floor to the c-suite. One sure way of improving the quality of the message is to eliminate trade compliance jargon from interactions with others.

Having the Courage to Say “No”

If you have explored and exhausted every approach to resolving a perceived compliance challenge in a commercially sensitive manner, and you conclude in good faith that a desired activity or outcome would not be permissible (or runs an unreasonable risk of being so perceived by relevant regulators), you have the often unpleasant but always unavoidable duty to say “no.” You must have the courage to say “no” and be able to articulate your reasons for doing so with clarity and conviction (and possibly to avoid conviction).

Compliance is not well-suited to people-pleasers. If you have a hard time holding the line in the face of sometimes daunting business pressures, it may be advisable to seek another vocation. And if your management does not unequivocally support you when you say “no” after a careful and thorough assessment of the facts and circumstances, it may be advisable to consider employment elsewhere.

Indeed, genuine management commitment to compliance is universally viewed as the single most important element of an effective compliance program. Without such commitment from the top, a compliance program simply will never be effective, no matter how dedicated and competent the professionals who staff the program.

Trust your instincts. If you are asked to do or condone anything that makes you feel uncomfortable, it’s likely a sign that something is amiss. Remember to protect both the enterprise *and* yourself. Document your actions and avoid creating a record that contains unsupported conclusions about the law or speculation about the facts that could be misinterpreted by an outside reviewer. Conduct yourself scrupulously and in good faith, but assume that anything you write might someday be shared with regulators, the press, or the public.

And if you take nothing else from this article, never, *ever* compound a mistake with a cover-up. Honest mistakes are inevitable and are highly survivable events. Turn those corners squarely and you will avoid having your title changed from “compliance officer” to “designated felon”.

Conclusion

There is no one-size-fits-all profile to identify or become an effective trade compliance professional. The very best come in all stripes, from a wide variety of backgrounds and experiences. However, careful observation

supports the proposition that the very best all share the three hallmarks described above. □

1 The views expressed in this article do not necessarily represent those of the author's employer or any other third party.

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