

2011 CUSTOMS UPDATE

Balancing global priorities

Updated Incoterms, new trade agreements, and increasing demands for improvements in supply chain security are putting more pressure on global logistics managers. Our compliance expert offers an update on the evolving compliance scene and best practices for developing a “value chain” model for overcoming these challenges.

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Global supply chain and customs compliance professionals are now forced to wear many hats; and it appears that the evolving regulatory environment in 2011 will add a few more.

This year will find the introduction of updated Incoterms along with a new South Korea/U.S. trade agreement and continued demands for sustained improvements in supply chain security. And there's little doubt that these mounting challenges will require a focused approach to managing current and emerging global compliance programs.

Taking a strategic approach towards managing global compliance trends supports a strong risk assessment model—and more importantly, adds value to a corporation's bottom line through reduced costs. By installing a series of steps focused on cost savings, regulatory compliance, and an increased awareness of how a product is brought to market, companies can transform their regulatory compliance programs into a “value chain” model that supports a stronger bottom line to the corporation.

Value chains reflect a series of activities similar to an assembly line, where one activity builds upon another, adding value to the product or process. For example, the activity of cutting a diamond may have a low cost, but the activity adds great value to the finished product. Similar to a quality certification, the core of any value chain will be a well-documented process with assessments and auditing of

adherence to the process routine.

Now, let's review some of the evolving compliance challenges that will be facing corporations in 2011 and offer some best practices for overcoming them. By fully understanding the compliance landscape your logistics team can not only speed freight through borders, but immediately add value to the bottom line.

ADVANCE CARGO DATA: U.S. AND EU PROGRAMS

U.S. Customs and Border Protection (CBP) targets high-risk shipments through the use of electronic data available through the manifest system prior to the movement of cargo from the foreign port.

The introduction of the Importer Security Filing (ISF) data for inbound ocean containers has been fully implemented and is now complemented by CBP's work with the Transportation Security Administration (TSA) for targeting airfreight shipments. While the Certified Cargo Screening Program (CCSP) has only been in place since August 2010, the data elements mirror ISF data and allow CBP to funnel the information through the automated targeting system to flag high-risk shipments for inspection prior to loading.

The European Union (EU) has piggybacked on CBP's work, requiring all shipments entering or exiting the EU to have an electronic declaration to Customs with security data verified.



As of January 1, 2011, the Safety and Security Amendment to the Community Customs Code now requires all member states to apply a uniform set of EU risk-criteria controls during Customs inspections. While the ISF filing is limited to ocean shipments, the EU program is in effect for all modes of transport.

The data elements vary according to the method of transportation and the reliability of the company involved in the transportation. In the U.S., this same standard is referred to as the “Known Shipper” program.

In all cases, the universal goal is to target high-risk shipments through a risk assessment model prior to arrival in the receiving country. Low-risk shipments receive expedited clearance times.

Companies developing a value chain will analyze the required data elements of each country their products passes through, and ensure all data elements are captured and verified before they are shared with the various Customs agencies. This will lower the risk of penalty action for declaring products differently in various regions of the world.

HTS CODE, RISK ASSESSMENT, AND FREE-TRADE AGREEMENTS

One of the key elements in all data risk assessment programs is the description provided to the Customs agency. In the majority of global Customs risk models the Harmonized

Tariff Number (HTS) is preferred to a product description, as this may vary due to different systems and languages.

The HTS code is often referred to as the classification or tariff number and may be described as the Schedule B number by U.S. exporters. In all cases, it’s a universally accepted coding system that identifies the actual product. Not only is this code linked to cargo security criteria, but it also drives the corresponding duty rate and any other government agency (OGA) requirement such as Food & Drug (FDA), Animal and Plant Health Inspection Services (APHIS), or EPA/DOT elements. When a product crosses the border, it must simultaneously clear both Customs and OGA requirements.

The HTS code is further scrutinized when used as the driving force behind free-trade agreements that use “tariff shift” concepts that offer a company reduced duty benefits for properly declaring a product “free-trade eligible.”

Despite all of these benefits and risk elements, most companies are reluctant to provide training on the General Rules of Interpretation (GRI) that drive these risk factors. In many cases, importers and exporters do not have access to the HTS books or rely on electronic systems that get the company close to the correct code.

As Rodney Dangerfield may have said, the HTS code just doesn’t get any respect. Companies with value chain activities recognize the HTS code as the key element in sharing data globally and provide annual training to key employees



Cargo is removed from an incoming ship newly arrived at the Port of Los Angeles/Long Beach. This is the largest and busiest port in the U.S., handling about 45 percent of all containers incoming into Customs and Border Protection.

and new employees entering the compliance or supply chain arena.

CBP suggests that firms without a strong compliance program are 10 times more likely to incorrectly classify a product and pay the wrong amount of duty. This makes it very difficult to request refunds for the overpayments of duty to the government, and it's even more unlikely that the request will be granted in a reasonable period of time.

Leading corporations with established value chains will recognize the importance of HTS codes as they affect customs compliance, cargo security, and preferential treatment under free-trade agreements. A single classification error can affect any one of these areas.

Best practices of compliant firms include developing a value chain improvement mindset that provides training of staff and the application of a single code to their global compliance programs for the greatest costs savings and the reduction of Customs exams worldwide.

INCOTERMS AND GLOBAL CONTRACTS

International Commercial Terms, or Incoterms as they're better known, have been updated for the first time

since 2000. January 1, 2011, begins the use of Incoterms 2010, the terms of sale used for most global contracts.

Reduced to 11 from 13, the new terms offer shippers the opportunity to reduce risk by applying a universally approved definition to contracts with clearly defined buyer and seller obligations.

The biggest challenge remains having a clear understanding of these terms in

all of the departments that are generally affected by the use of these terms. This includes the contracting group, purchasing, accounting, import/export compliance departments, as well as those in supply chain management, shipping, and legal.

The commonly used Delivered Duty Unpaid (DDU) has been eliminated along with three other less utilized terms (DES, DEQ, and DAF) by the Delivered at Place (DAP) and Delivered at Terminal (DAT).

The EU utilizes Incoterms for both domestic as well as international trade while the U.S. continues to shift between Incoterms internationally and domestic terms derived from the Uniform Commercial Code. This major difference accounts for U.S. firms' confusion between an FOB shipment

in the U.S. delivered by truck or air versus the internationally approved FOB Incoterm that is mode of transport specific—a true ocean shipment.

Through a value chain process, global shippers focus on the proper use of trade terms in contracts and purchase orders early in the negotiation process in order to ensure the term and its implications are acted upon through



A U.S. Custom Border Protection officer watches a monitor as he operates a mobile truck x-ray over a seaport container.



Border Patrol Agents routinely conduct searches of trains entering the U.S. from Canada.

the entire transaction.

Updating systems to reflect these new choices will be the first step in establishing harmony within a company. Firms with best practices in place support training on the use of Incoterms and bring together all departments for a discussion on how to apply the terms and in which circumstances.

ANTI-BRIBERY PROGRAMS

While Incoterms and data elements are the most common causes of border delays, the little discussed behind-the-scene interactions of a company's agents in facilitating trade may lead to multi-million dollar penalties.

Working with Customs brokers and freight forwarders is a normal part of moving product worldwide. While firms may vet these groups based on their experience, service, and delivery time capabilities, a 2011 contract should include a key performance indicator based on "required behavior" of their agent in preventing and avoiding anti-bribery activities.

The Foreign Corrupt Practices Act (FCPA), the U.S. anti-bribery program, continues to result in penalties for U.S. corporations as well as individuals. FCPA requires U.S. companies to vet their overseas agents and service providers to ensure bribes are not used as a method for facilitating trade.

The Organization for Economic Co-operation and Development has

applauded the United States for fighting foreign bribery and confirmed that the U.S. is first in investigating and prosecuting firms who violate these standards.

The Department of Justice (DOJ) leads the way in pursuing prosecutions with 50 individuals charged in 2009 compared to only two in 2004. Corporations have been hit with multi-million dollar penalties in the past five years and shareholders are concerned about the aggressive approach towards prosecuting individuals.

This increased focus has resulted in the U.S. Chamber of Commerce requesting clearer indications of what a violation of FCPA actually entails while pointing out the reality businesses face when operating in countries with endemic corruption, such as Russia. In fact, Russia is consistently ranked by Transparency International as one of the most corrupt countries in the world.

The New Year will bring a greater scrutiny of anti-bribery pursuits when the U.K. Bribery Act goes into effect in April 2011. Most European companies are considering stronger agreements with their freight forwarders on the portion of the journey for which they are responsible and outlining when they are not.

Avoiding the attention of both the Department of Justice and its U.K. counterpart will become more critical this year. Corporations with best

practices initiate and maintain regular training programs on FCPA requirements at all levels of the corporation, providing explicit examples of how doing business globally may lead to unexpected penalties.

DEVELOPING THE VALUE CHAIN

The continued changes within the international supply chain arena call for a renewed approach to building global expertise. Managing local logistics and Customs compliance programs must be offset with an eye toward regional issues and regulations that will have a global impact.

Using a "value chain analysis" approach to build a chain of activities links multiple departments to a focused goal and objective. The result: Each group will know and understand how they build value throughout the supply chain.

Similar to an Olympic relay race, each member of the team is dependent upon the other to properly pass the baton to the next in the hopes of collectively winning the race. A single delay or misstep at any transfer point will alter the timing and outcome of the race, as we've seen teams win or lose by a fraction of a second.

Similarly, corporations with value chain activities ensure the start of the contract, agreement, or shipment begins with requirements that, when carried through, will expedite the movement of the shipment and lower the risk of delay or loss of freight.

Working locally and acting globally is just the beginning. Developing the leaders and experts within the global transaction will require an understanding that one's local actions will affect, for better or for worse, the company's—or its customer's—global presence and bottom line.

A value chain approach will guide each global partner toward a partnership approach where there is true understanding of how each step in the chain builds upon the other. □

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