

Tools and Best Practices for **Informed Compliance**



WHITE PAPER



Executive Summary

The term “Informed Compliance” was formally introduced in the United States with the enactment of the Customs Modernization and Informed Compliance Act (the Mod Act) in 1993. The concept evolved from what had been a somewhat strained and often adversarial relationship between Customs and the trade community.

Under the concept of Informed Compliance, trade compliance is considered a shared responsibility between Customs and the trade community. It requires Customs to clearly and effectively communicate its requirements to the trade and, in return, the business community is obligated to conduct its regulated activities in accordance with US laws and regulations. Under the Mod Act, importers are required to exercise “reasonable care” in carrying out their legal responsibilities and ensuring entries are correct and proper duties are paid.

While the term “Informed Compliance” has specific meaning in the US, the concept has been adopted by many Customs administrations around the world. Today, there is a greater recognition in most countries that trade compliance is a shared responsibility and that Customs administrations have a responsibility to educate importers on what is expected of them. With that comes a responsibility for the business community to take concrete steps to ensure that they are complying with applicable laws and regulations.

For example, in the spirit of Informed Compliance, most countries have adopted a concept similar to “voluntary disclosure” in the US, whereby penalties are reduced, or even eliminated, if the importer discloses errors in transactions before Customs discovers them. Similarly, the concept of self-assessment or self-audit is becoming more prevalent around the world, whereby Customs administrations are encouraging companies to create internal audit procedures under programs similar to the US Importer Self-Assessment (ISA) program. Such programs reflect a growing global recognition that trade compliance is a shared responsibility between Customs and the trade community.

Although the term Informed Compliance is not typically identified with export compliance, the concept that the government and the business community have a shared responsibility to optimize compliance has applicability there as well. Because the penalties for non-compliance with export requirements can be severely burdensome, it is incumbent on exporters to be extremely diligent to optimize compliance.

What follows are some recommended tools and best practices to assist all companies actively involved in global trade (whether importing, exporting, or both) to thrive in today’s world of Informed Compliance and to achieve optimal performance while minimizing penalties.

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The Basic Tools

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What Customs administrations are looking for today from the trade community is a true commitment to compliance. From Customs' perspective, the exercise of reasonable care by any company starts with the development and implementation of an effective compliance program that is fully supported by senior management. The key elements of such a program are described below.

Compliance manual. A description of the compliance program must be in writing and include a clear statement of the corporate commitment to compliance, along with high-level policies and corporate goals in the compliance arena. The manual should be company-specific and provide detailed descriptions of all processes and procedures relating to the import process, including classification, valuation, country of origin determination, and duty preference programs.

Having a compliance manual won't help much with Customs unless it is being used! Don't let the company compliance manual collect dust on the shelf. Be sure to keep the manual updated whenever there is a change in circumstances around the processes, such as new products being introduced or different countries of export being used. There should also be a planned regular review of the manual to ensure high-level policies are kept up-to-date.

Training. A comprehensive training program should be implemented to ensure all parties throughout the organization understand their roles and responsibilities. One of the biggest mistakes companies make is failing to recognize that a number of organizational units have roles to play in ensuring compliance with trade rules and regulations. For example, departments such as sourcing/procurement, engineering, sales, transportation, financial, legal, and even the executive team can impact trade compliance. Not all, however, need to receive the same level of training. A "some for all and all for some" philosophy should be adopted, and training should be tailored to the needs of the various departments to ensure optimal compliance. As requirements in the global arena are constantly changing, training should be recurring and not a "one-time" effort to ensure that stakeholders remain up-to-date.

Communication. Once the compliance program is up and running and all key players have been trained on their roles and responsibilities, the success of the program will depend on effective communication across the organization and with key supply chain partners, such as brokers, forwarders, and carriers. It all starts with buy-in from the top. Make sure there is alignment with the company's goals by providing senior leadership with regular reports to underscore the value of compliance.

Other effective communication strategies to be considered include:

- Regular meetings with key departments
- A "Trade Compliance Newsletter" that is circulated on a regular basis
- An internet web portal with Trade Compliance FAQs, or ways to ask questions of the compliance team, etc.
- Documented standard operating procedures (SOPs) with external providers
- Regular assessment of external providers (e.g., "broker score card")

Internal control reviews/audits. No company and no person is perfect. Mistakes are made even under the most effective compliance programs. Conducting regular internal control reviews or audits will ensure that those mistakes do not become too costly. This process will not only uncover errors that need to be fixed, but also determine if the underlying process resulting in the error needs to be updated.

These internal reviews/audits can be conducted in a number of ways. But to be successful, they must be structured to achieve an unbiased review of operations. These can be done internally, but must be conducted by someone who did not do the original work. Ideally, someone from a different team or department should be used. Many companies also choose to bring in a third party compliance expert for assistance in this process. The benefit of this approach is that it increases the likelihood of an unbiased view, but it does increase the cost. To conduct the internal audit, a representative sample of past entries should be selected and verified for accuracy. Although the number of entries selected for

review can vary based on the circumstances facing the company and the level of risk associated with the transactions, generally a sample size of 5-10% is recommended.

Recordkeeping. It is not enough to have compliant transactions. Virtually every trade compliance regulatory agency worldwide dictates that records underlying those transactions must be kept for a finite period of time. Specific requirements have to be known to ensure compliance. In the US, for example, the Mod Act requires that records and entry documents be kept for five years from date of entry, or five years from the date of the activity that required the maintenance of the records.

While documents can be kept manually, there are numerous advantages to electronic recordkeeping. It is not only more efficient and easier to manage, but it facilitates quicker document retrieval. Most automated systems also allow changes made to documents to be tracked and the party making the changes to be identified, which is extremely helpful in the case of a Customs audit. Electronic recordkeeping also makes it easier to share documents with partners such as brokers and Customs counsel, when necessary.

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Other Informed Compliance Tools and Best Practices

Companies that have implemented formal compliance programs as described above are well on their way to demonstrating that they understand the concept of Informed Compliance and what it means to exercise “reasonable care” to optimize their compliance performance and substantially reduce the risk of fines and penalties.

There are, however, some additional tools and best practices that should be considered in the spirit of Informed Compliance, including:

- Establish compliance goals and continuously monitor performance in meeting them
- Create a cross-functional and cross-organizational “Compliance Group” to monitor the company’s compliance efforts on an ongoing basis
- Develop compliance requirements for suppliers and brokers and hold them accountable
- Keep management informed and work with management to ensure adequate resources are committed to compliance efforts

Implement a “Pre-classification process,” preferably with the use of an automated system using up-to-date legal content, to ensure accuracy of classifications:

- Ensure that compliance professionals work to stay up-to-date on current developments in the Informed Compliance world through ongoing education
- Review publications produced by Customs and other regulatory agencies
- Sign up for any automated messaging systems used by Customs to update the trade
- Attend trade conferences and seminars and stay engaged with fellow trade professionals on current issues impacting company transactions
- When needed, enlist the support of outside trade experts (consultants, lawyers, brokers, etc.)
- When in doubt, seek the advice and counsel of Customs/CBP under the true spirit of Informed Compliance

Automation

While automation is not mandatory for a trade compliance program to be successful, it is clear that automation is an effective tool to enhance a company’s compliance program by increasing accuracy, consistency, and speed of operations, while driving up company compliance rates. Automation facilitates the flow of import/export information across the global supply chain in real time and seamlessly connects with Customs and other government authorities worldwide. Another advantage of automation is that it facilitates the self-audit process by allowing a company to audit 100% of its

declarations. Automation, in many ways, enhances the effectiveness of the people that use it, and the people have a tendency to enhance the automation tools with which they work. Success will not happen without both in place.

To be compliant under the concept of Informed Compliance, it is essential for a company trading globally to have access to the most up-to-date trade rules and regulations applicable to their transactions. One of the challenges companies face today is that such rules and regulations are changing constantly, and they are not consistent from one country to another. Add to that the complication of the multiple languages and the nontransparent way that regulations are “published” in many countries, and it is almost impossible for companies to keep up.

Fortunately, there are trade compliance automation systems available today that automatically incorporate global trade content, which is a comprehensive collection of global trade regulations from around the world, including tariff schedules, denied party lists, munitions lists, free trade agreements, and import/export requirements. In choosing an automation solution, it is critically important for companies to closely scrutinize the depth and breadth of the global trade content being offered, as well as the frequency of providing updates to that content when changes occur.

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Conclusion

The concept of Informed Compliance in which global traders operate today creates both challenges and opportunities. It is clear that the shared responsibility for compliance between government and business is here to stay. The exercise of reasonable care in moving goods in a compliant manner comes down to demonstrating a corporate commitment to compliance that is backed up by written processes and procedures that are kept up-to-date and monitored on a regular basis. The tools and best practices outlined here will help companies thrive in meeting the demands of moving global trade effectively, efficiently and, most importantly, in full compliance with applicable trade rules and regulations.

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