

Trade Compliance and Export Controls

WHY SHOULD FREIGHT FORWARDERS CONCERN THEMSELVES WITH TRADE COMPLIANCE?

Many FIATA members are no longer just “architects of transport” but fully-fledged logistics services providers. This entails additional liabilities and risks. Compliance is therefore more and more important for the modern forwarder.

Being compliant means respecting all international and national rules, regulations, and laws governing the business. This requires logistics companies to know and respect all laws and regulations that apply in the process of exportation and importation. Duties arising from servicing international trade include import and export controls, embargoes, sanctions, customs formalities, transit and intrastat filings, product classifications, origin assessments, supplier’s declaration management, supply chain security procedures and denied parties screenings.

Non-compliance can be very expensive. In 2009, a large service provider was fined USD 9.44 million by the US Department of Commerce Bureau of Industry & Security (BIS) and the US Department of Treasury Office of Foreign Assets Control (OFAC) with regards to goods transported to Iran, Sudan, and Syria. Recently a former manager of a Dutch freight forwarding company pleaded guilty to conspiring to defraud the United States by facilitating the illegal export of goods to Iran (see box). This could carry five years’ imprisonment and a fine of USD 250,000. Swiss logistics services providers (LSP) have incurred similar problems and fines in recent years, though not always of the same magnitude.

IGNORANCE IS NO EXCUSE IN LAW

Although forwarders today are no longer just “architects of transport” and have developed new skills to offer their customers additional services, too few of them realize the full legal implications of this new role

in the supply chain and/or in the trade context and their obligations toward their customers/shippers.

LSPs are obliged to respect the law and are doing the right thing in alerting their customers. Even if shippers are principally responsible for their businesses, when the LSP issues shipping documents, the same rules and regulations apply. The LSP must respect export/import control laws and regulations, sanctions and embargoes.

Trade compliance is complicated, but important. Just looking at the issue of restricted/denied party screening there are some 200 different lists today with up to 120,000 names of sanctioned individuals or companies. The embargoes do not apply to dual-use products only, but also to other products and services, blueprints, and sample shipments.

THE LONG ARM OF THE LAW

Furthermore, not only national or United Nations rules apply, but EU and US law must be abided by, especially US Export Administration Regulations (EAR). This concerns products of US origin, products with components of US origin, and blueprints of US origin.

The forwarder usually expects the shipper (producer/exporter) to make the necessary checks and obtain the necessary permits. However, it relies on his principal at its own peril. A lot of SME’s are not thoroughly informed about the complexity of legal requirements, and/or may struggle to keep up to date with the frequent changes.



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– a must for forwarders

AEO's (Authorized Economic Operators) have a specific obligation to check all customer information, delivery addresses, agents' and partners' data against the most common sanction lists. Companies that have only a few export shipments a year can do so manually, but greater numbers require automation and again, the sanction party lists change quite frequently.

A WIDE SPECTRUM OF SUPPLIERS

Several software vendors offer easy-to-use trade compliance software. So far, primarily multinational producers and some large LSP have invested in the necessary technology and implemented trade compliance solutions in their legacy system. A recent survey by Nielsen + Partner showed that even in Germany more than half of all LSP's do not use an IT supported screening system although they have been compelled to do so by law for some five years. Whichever software is chosen it should document the screening results with a full audit trail and archive all trade compliance related documents for several years in such a way that they can be used when there is an audit request.

COST FACTOR

Trade compliance should be taken very seriously. Failure to abide by laws and regulations can result in a range of negative consequences. Products may be confiscated and destroyed or returned to the sender. There is also the possibility that trading with certain entities or countries is prohibited.

In addition, there is the personal liability of managers. If a company has failed to implement compliance rules and procedures its CEO is at risk, even if unaware of decisions taken by lower hierarchy. High penalties and/or imprisonment may entail. If a forwarder or LSP risks violating the law, it should consider not only the fine but also the legal costs of a fraud case, particularly in the USA, the loss of its reputation, clients, personnel etc. A family owned business could easily go bankrupt if the owner ends up in jail.

MARKETING OPPORTUNITIES

A "compliance package" including screening services, import/export pre-checks etc. is a value adding service that can

be charged over and above the normal freight rate.

The global players in the forwarding industry already offer such compliance services. A smaller international freight forwarder risks to be excluded from certain trades if it cannot offer a similar service. In fact, an increasing number of tenders require LSP to give proof of an effective compliance management system.

A "compliance package" is an excellent marketing tool which allows the forwarder to surface from its competitors in a highly volatile and price sensitive environment. Being able to offer a client advice on trade compliance risks can further strengthen customer relations.

THE FUTURE

There are no signs from the U.S. government or its allies that export controls and financial crime prevention will be placed on the backburner, or the pace of change might slow down. In fact, quite the opposite can be expected.

Freight Forwarder Pleads Guilty to Conspiracy for Facilitating Export of Goods to Iran

The U.S. Department of Justice announced some time ago that a former manager of a Netherlands-based freight-forwarding company pleaded guilty for conspiring to defraud the United States by facilitating the illegal export of goods to Iran. The man pleaded guilty and entered his guilty plea before U.S. District Judge in the Newark federal court. He was the sales and business development manager for a company described in the Information as the "Netherlands Freight Forwarding Company" in 2007 and 2008. The Netherlands Freight Forwarding company was

affiliated with a New York-based freight-forwarding company. The indicted facilitated shipments to be made to Iran without the necessary authorization from the United States government and in violation of the law. In October 2007, an assistant secretary of commerce for export enforcement – at the behest of the U.S. Department of Commerce, Bureau of Industry and Security ("BIS") through its Office of Export Enforcement – issued a Temporary Denial Order (TDO) denying export privileges to his company. The TDO prohibited any person, which included the in-

dicted, from directly or indirectly exporting or re-exporting to or on behalf of the coconspirator, among others. The coconspirator, who was located in another country, purchased U.S. origin goods from a New Jersey company, among other companies, for businesses and governmental agencies of Iran. The New Jersey Company was in the business of reselling chemicals, lubricants, sealants and other products used in the aircraft industry. As part of the conspiracy, there was evidence that in November 2007, air waybills and other transport documents were in breach of the instructions contained in

the TDO. In January 2008 an e-mail admitted that, "99% of these goods were destined to be sent to Teheran/Iran, which was and still is a very difficult destination due to political reasons. We have handled shipments to Teheran for various customers who had to shut down their operation because they were doing business with Teheran/Iran and in spite of the risk we take we always handled your shipments in a good manner." The sentence may carry a maximum penalty of five years in prison and a USD 250,000 fine and is expected by May this year.