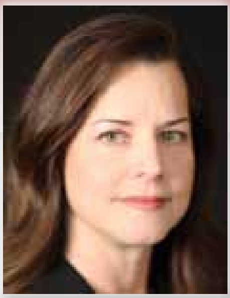

On Second Thought

With Julie Gibbs

Get cultured in compliance

There are several reasons why executives throw caution to the wind and ignore compliance regulations. To name a few we have ignorance, greed, and intentional disregard.

Inevitably, the gamble catches up with them and it can be ugly.

Earlier this year, Pratt & Whitney Canada Corp. (PWC) was fined $75 million for violating the Bureau of Industry and Security's Export Administration Regulations (EAR), the State Department's International Traffic in Arms Regulations (ITAR), and making false statements. These were in connection with its illegal export to China of U.S.-origin military software used in the development of China's first modern military attack helicopter, the Z-10. The false statements included failure to timely inform the U.S. government of defense article exports and a belated disclosure.

Did the PWC executives really think the government wouldn't eventually catch on?

Trade compliance penalties can be significant. The more severe or intentional the offense is, the higher the penalty. Penalties for export violations can easily add up to tens, if not, hundreds of millions of dollars under the International Emergency Economic Powers Act (IEEPA) and also include jail time of up to 20 years. U.S. Customs and Border Protection (CBP) penalties range from two to four times the loss of revenue (or 20 to 40 percent of the value for non-revenue cases) for negligence or gross negligence. Fraud involves penalties up to the domestic value of the goods.

It's not only about the monetary penalties. Let's not forget the government's ability to deny export privileges resulting in market loss. Bad press resulting from these penalties ruins a company's reputation that will take years to repair, if ever.

Companies don't realize that they can't always just pay their way out of violations. Depending on the severity, penalties can be crippling for a business. For example, in January 2011, Chitron-US was ordered to pay fines of over $15.5 million. These fines resulted from illegally exporting various electronic components and other items subject to the EAR and the ITAR to end-users, including entities on the BIS Entity List, for military end-uses. In addition, two employees were convicted of conspiring to violate regulations over a period of 10 years, in addition for aiding and abetting. As a result, the two Chitron-US employees went to jail; the company was listed on the State Department's Debarred List; Chitron-US was denied export privileges for a period of 10 years; and all active export licenses held by the firm were revoked.

When government investigators are compiling information around a case, they're building an opinion on whether or not the company and any employees should be criminally prosecuted. Investigators examine historic key decision points on the company, such as how many times a company chose to do the wrong thing when it could have done the right thing. Investigators also try to establish a pattern of deliberate conduct or willfulness that will determine the severity of the penalty and whether the company is negligent or grossly negligent, and whether there was criminal activity and fraud. Much of this can be determined by examining a company's culture of compliance.

The cases mentioned above may seem extreme but clearly reflect criminal intent. Companies that have good intentions and have a compliance program in place are more likely to have their penalties mitigated. But even if a company has a compliance program, it won't be effective if the internal culture doesn't support it. Internal control manuals and export management control programs are great, but if nobody follows them, then what's the point?

Companies that have a culture of compliance exude certain qualities. The first quality of a company with a culture of compliance is that the message comes from the top, including the board of directors for example, not just the chief executive officer. Compliance is also communicated in a broad spectrum. Business practices, human resources practices and the treatment of employees, for example, are areas other than global trade compliance that should be included in the culture of compliance. The vision, mission, and objectives should all be translated into goals and metrics that can be measured. If you think about it, compliance feeds right into these measurements. Compliance should be pervasive at each level of management within the company. All executives, managers and employees should be walking the walk and not just talking the talk on compliance.

A culture that fosters compliance will identify risks in each strategic area of the business. Control points are established for these risk areas and should be a focal point for audits, training, policies and procedures.

Compliance is measured and reported on at all levels as well. Measurement and reporting are essential in confirming objectives are consistently met and ensuring they will continue to be met. A measurable way to judge the compliance culture of a company is to monitor how corrective action plans are developed and implemented, if a weakness is re-evaluated post-correction, and if people are held accountable.

A compliance culture is also about systems. Literally, a company's information systems and management of these systems should be ingrained in the compliance culture. Ensuring data integrity, restricted party screening, and the maintenance of valuation, country of origin, and classification information used in order management and manufacturing systems are imperative to maintaining a compliant organization.

A culture of compliance helps companies achieve their operational goals while supporting expansion into new markets and enabling corporate growth. It also supports mergers, acquisitions and initial public offerings. Establishing a culture of compliance helps ensure that companies will be able to succeed globally. It will keep them out of trouble and jeopardy of losing their business by throwing caution to the wind.

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