



KPMG SMART PRACTICE

Four conversations to have with the business

As requirements for export controls and sanctions grow in complexity, managing risk requires increased coordination between the compliance team and the business. This will mean more than simply providing the occasional compliance training to sensitize operations to potential pitfalls. In a more constrained regulatory environment, it is imperative for compliance to be in lockstep with the business as it grows and changes. While each enterprise has its particular nuances, there are a few conversations that the export compliance team members should have with their colleagues to help plan for the future.

1. What is the business's growth strategy?

Compliance processes must grow and evolve as the business changes – if they remain static they risk becoming obsolete. The best way to prepare is to understand what the future looks like. This means working side-by-side with the business to review plans to enter new markets and potential risks that might be associated with these plans. For example, is an existing product going to be introduced into a new country or region?

Alternatively, is a new product going to be sold in a country where there is already a presence? Do any of these changes create end-use/end-user concerns? Understanding what the future looks like allows the export compliance team to

In a more constrained regulatory environment, it is imperative for compliance to be in lockstep with the business as it grows and changes.

develop a strategy before the first export. For example, close collaboration will enable the team to determine if licenses may be necessary and have sufficient time to obtain them. Including the export compliance team in strategic conversations allows early risk identification and mitigation to limit customer disruptions.

2. What changes are planned to current vendors or suppliers?

Similar to understanding the organization's overall growth strategy,

the export compliance team should be closely involved as procurement onboards new vendors. This is particularly important as the last few months have brought pandemic-related supply chain disruptions that have prompted many companies to shift their procurement strategies. These changes can lead to complications if the procured parts contain export-controlled data. Reaching out to the internal team that owns this process allows the export compliance team to validate whether a vendor is a restricted party or determine if an export license is required to share technology for the production of the procured item. A closer connection between the export compliance team and the business also enhances efficiencies for the procurement group so they don't invest time with suppliers who may be problematic from a compliance perspective. Additionally, fostering a relationship with the procurement team allows the export compliance team to better assess business processes. It can then take action to ensure that current processes mesh with business procedures.

3. What is the organization's level of visibility into foreign distributors?

The export compliance team should partner with the business to define the relationships with foreign distributors. This process provides an excellent opportunity to assess potential end-user risk issues. In situations where the business has limited knowledge about foreign-distributor activities, the export compliance team can advise about steps to address compliance risks. It is also not uncommon for business and compliance professionals to acquire information through years of experience working with distributors, only to have that knowledge walk out the door because it is not documented. In some cases, distributors provide point-of-sale reports once they have sold the goods. This creates a potential liability for the exporter if the distributor is selling to restricted parties or sanctioned countries. Through formally recording and auditing distributor information, the export-compliance team can assess if action is needed to minimize compliance risk (i.e., requesting that a distributor provide evidence of its export compliance program). In a worst-case scenario, this process may uncover export control violations that can be mitigated through self-disclosure to regulatory authorities.

4. What are the customer and product life-cycles?

The export compliance team must understand the product's life-cycle to identify and categorize risks. Additionally, understanding the

SMART PRACTICE

customer onboarding and delivery process will facilitate risk identification. Defining the product lifecycle provides valuable insight into the personnel with access to the product, technical data and third-party touchpoints – all of which can create risk. Understanding how customers interact with the enterprise enables risk identification. The export compliance team can then develop compliance procedures that promote visibility and monitoring of these risk issues. Establishing these communication paths sensitizes the business teams to understanding that export compliance risks don't just arise during the sale of the

product but may be concentrated at other points. Building this foundational knowledge allows the team to better anticipate where problems may arise.

Talk is good

By engaging with the business on these four topics, two objectives can be achieved. First, they enhance the export compliance team's knowledge which better enables it to craft appropriate processes and procedures. Second, it helps foster the relationship with the business so that there is an open conversation with the compliance team, firmly planting the export compliance

team as growth drivers who can help the organization achieve its goals while minimizing compliance risk. ■

About the authors:

Steven Brotherton (San Francisco) is a Principal in the Global Export Controls & Sanctions practice of KPMG LLP and leader of the service line. sbrotherton@kpmg.com

Elizabeth Shingler (Philadelphia) is a Manager in the Global Export Controls and Sanctions practice of KPMG LLP. eshingler@kpmg.com