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# DEVELOPING AND MANAGING A GLOBAL CUSTOMS COMPLIANCE PROGRAM

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HOT TOPIC

# DEVELOPING AND MANAGING A GLOBAL CUSTOMS COMPLIANCE PROGRAM

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**RC: What legal and regulatory developments, if any, have you seen affecting customs compliance over the last 12 months or so?**

**Schwechter:** Probably the most significant US customs compliance development in the last 12 months has been the en banc decision of the US Court of Appeals for the Federal Circuit in *United States vs. Trek Leather, Inc., et al.* A petition for a *writ of certiorari* seeking Supreme Court review of the decision has been filed. The Court of Appeals decision found that an importer's owner and president could be held personally liable for failing to declare dutiable assists on company imports, even when there was no finding of fraud, and there was no determination that the corporate veil had been pierced. This decision has sparked significant concern among import compliance staff for a wide variety of companies, fearing that US Customs and Border Protection (CBP) might seek to hold them personally liable for import violations where their employers are the importers of record. While the particular facts at play in *Trek Leather* will most likely make the decision in that case most potentially applicable to activities involving small- and medium-sized importers, rather than to those of large multinational corporations, the potential impact of the decision could be broad. Furthermore, it may prompt import compliance staff for companies, in many cases, to seek from their employers some type of insurance or indemnification should CBP seek penalties against them, personally.

**Neuschul:** In general, the continued growth of regulatory complexity, as it relates to importation procedures, is evident in all regions. However, we would like to point out two specific trends. Firstly, the use of free trade agreements (FTA) negotiations, and secondly the evolving role of customs enforcement. With negotiations progressing on the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), which will cover about 70 percent to 80 percent of global trade, the potential for duty related benefits will become more apparent. However, as free trade is never free, the role of compliance will increase exponentially and being prepared to handle those challenges for existing and future FTAs will be the sole key to be able to reap benefits. It is important to mention that one of the biggest gaps in compliance for companies is in the area of FTAs. As trade facilitation programs are being implemented by more and more customs authorities around the world, becoming the 'trusted importer' in key markets will be key to maintaining good lead times, and without robust compliance processes, which are based on risk management, attaining that designation will be hard.

**Antonini:** The economic sanctions imposed on Russia in recent months and the press coverage

thereof has markedly increased the attention paid to European Union (EU) export controls and trade sanctions by in-house counsel. The EU rules governing export controls and trade sanctions are now on the radar of many companies. This increased awareness appears to have resulted in more and more companies reviewing existing compliance policies, or even creating them for the first time.

**Mojica:** Three interesting developments come to mind. The first is the continued growth of US Customs' Centres of Excellence and Expertise (CEEs), a new model to handle the import process which transfers operational trade functions from the ports of entry to industry-specific hubs. The idea behind the CEE program is that, by aligning resources along industry lines – pharmaceuticals, electronics, textiles, and so on – US Customs will be able to focus on high-risk shipments and the importers will benefit from the uniformity and predictability that comes from having a single point of contact. The second is US Customs' increasing focus on antidumping and countervailing duty (AD/CVD) order enforcement. US Customs has created a task force which is actively looking for AD/CVD evasion and has ramped up its enforcement efforts by way of importer audits and criminal and civil penalty actions. And the third is the rise of civil claims brought by private parties under the False Claims Act (FCA) for trade-related violations, for example, knowingly failing to pay antidumping duties or misstating the origin of imported products. A flurry of trade-related FCA cases filed by whistleblowers and competitors resulted in multi-million dollar settlements over the past year.

**Kanas:** Over the last 12 months, the Brazilian customs authorities has began to structure changes to their system of control over imports and exports, in light of the World Trade Organization (WTO) Trade Facilitation Agreement, while also becoming stricter on compliance with the current norms. Irregularities concerning imports on behalf of third parties or under orders are particularly sensitive, and more companies have been subjected to investigations and penalties. It is worth noting that a new anti-corruption law has been in force since January. The new law covers acts and practices closely linked to foreign trade, such as the bribery of public agents or the imposition of obstacles to investigation or supervision.

### RC: To what extent are different jurisdictions collaborating with each other on monitoring and enforcement efforts?

**Mojica:** One area where there has been a lot of cooperation among countries is the enforcement of intellectual property rights (IPR) at the border. For example, the governments of the US, Mexico and Canada are currently working with INTERPOL and EUROPOL in a task-force setting to combat IPR theft.

This joint effort has led to significant seizures of counterfeit and trademark-infringing merchandise, civil penalties and criminal prosecutions. The World Customs Organisation (WCO) has also played a crucial role in facilitating cooperation between member countries on the border enforcement of IPR and other issues – such as curbing the trade in endangered plants and animal species – through its technical assistance and training programs.

**Antonini:** Regarding collaborations between different jurisdictions, it is interesting to look at the EU, which is a customs union. This means that substantively, rules are developed at the EU level. The rules are, however, implemented by the EU member states, which sometimes results in significantly different outcomes depending on the relevant customs authorities. For certain items, there is coordination and cooperation between the different member states, for instance the issuance of binding tariff information. Also, large scale customs fraud is generally investigated at EU level by the European Anti-fraud Office (OLAF), the findings of which are implemented by the member states concerned. Even in such circumstances, however, divergent rules on penalties can lead to an important difference in terms of the consequences for importers, depending on the member state where the imported goods are concerned.

**Kanas:** Customs authorities are increasingly collaborating with other foreign agencies, notably in three areas – bilateral agreements focused on customs cooperation, bilateral agreements focused on impeding corruption and the implementation of multilateral agreements, especially in the UN and OCDE sphere. In this sense, there are important initiatives between the Brazilian Internal Revenue Service and the Brazilian Federal Police on sharing of tax and customs information with the US Internal Revenue Service, in order to facilitate investigations in both countries.

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>
> *Vera Kanas, TozziniFreire Advogados*

**Neuschul:** In the US and the NAFTA jurisdictions, and within the EU and its trade partners, customs collaboration across countries is not news. However, what is important to note and keep in mind in connection to the proliferation of FTA negotiations and customs unions creations is that this collaboration will further proliferate as well, hence creating a closer cooperation among customs authorities. Another point to make is the fiscal vs. geographical jurisdictions cooperation among fiscal authorities, meaning tax authorities talking to customs. A big portion of imports into major markets are based on intra-organisation transactions. These transactions are, by their nature, driven by transfer pricing guidelines established within the organisation, so they are under increased scrutiny by both tax and customs authorities. The rules governing tax and customs arms-length principles are proven in different ways, so it is very important that a customs segment is introduced into the transfer pricing documentation to address this dichotomy.

**Schwechter:** While various federal departments and agencies, including the US Office of Foreign Assets Control (OFAC), the Board of Governors of the Federal Reserve System, and the Department of Justice (DOJ) have, for many years, coordinated their enforcement efforts in connection with violations of US sanctions and embargo prohibitions by financial institutions, a trend has emerged over the past few years in which various states have also become actively involved in embargo and sanctions enforcement-related activity. For example, in the last three years, the New York State Department of Financial Services (DFS) has brought actions against Standard Chartered Bank, Royal Bank of Scotland, and Bank of Tokyo Mitsubishi UFJ Ltd. for alleged embargo and sanctions related activity, including 'stripping out' information about embargoed countries from banking documentation passing through New York financial institutions. Standard Chartered Bank settled the DFS allegations brought against it for $340m, Royal Bank of Scotland settled for $100m as part of a global settlement with federal authorities, and Bank of Tokyo Mitsubishi UFJ Ltd settled two proceedings against it for $250m and $315m, respectively. In some cases, these settlements also resulted in the responsible employees being disciplined or terminated.

**RC: How important is it for firms to be aware of export issues when moving sensitive information or goods to foreign partners or third parties?**

**Neuschul:** In Silicon Valley, on a daily basis we are witnessing situations where awareness of export controls regulations is hitting companies in a very, very hard way. In innovative environments, technologies and designs are created at lightning speeds and research is shared globally in

collaboration efforts. Export controls issues are by their nature harder to identify than customs issues, because they are not necessarily tied to a particular transaction, such as an import. In R&D heavy environments, it is crucial to understand the concept of deemed exports and release of controlled technology, and to implement a process that can effectively manage access to, and the dissemination of, technical information.

**Kanas:** Before initiating export operations negotiations, it is important that companies check whether the products to be exported are subject to Brazilian export controls. Restrictions may be applied to certain products and destinations, and they may involve special procedures and require authorisations. In addition to this, if sensitive information is connected to personal data or IPR, certain measures must be observed.

**Schwechter:** It is critical for exporters to be aware of export control and embargo and sanction requirements when moving sensitive technology, software or goods to foreign partners or third parties. In addition to significant criminal penalties comprising either 20 years in jail, $1m in fines, or both, violations can incur civil penalties as high as $250,000, or twice the value of the transaction,

whichever is greater, per violation. In addition, a company's export privileges can be denied. In the case of US companies, this means prohibiting all or certain of its exports, and, in the case of foreign companies, this means a prohibition on their obtaining US goods or technology. US authorities have been particularly vigilant in bringing criminal or civil actions against violators where they involve unlicensed shipments to embargoed countries, such as Iran, or to countries of concern, such as China, when licences are required.

**Antonini:** The importance of being aware of export issues cannot be underestimated. Export controls may already be violated by merely sharing certain information on the phone with foreign partners. While the degree of enforcement varies within the EU depending on the member state concerned, apart from administrative and criminal sanctions, companies risk severe reputational damage. Furthermore, the violation of export controls, even if such violations remain undetected, can be a deal breaker in terms of possible future mergers or acquisitions. It is therefore of fundamental importance for companies to be well aware of export controls and economic sanctions.

**Mojica:** Firms responsible for transporting sensitive and non-sensitive information and goods to non-US parties cannot underestimate the importance of compliance with export controls and economic sanctions. In addition to complex country-based embargoes that relate to nations such as Iran, Syria, Sudan, North Korea and Russia, the prohibitions extend to many blacklisted parties around the world, and implicate the transfer of funds through US financial institutions, wherever located. The use of name screening, end use certifications, destination control statements, and appropriate due diligence procedures is an essential element of any effective trade compliance program.

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> *Miller & Chevalier Chartered*

**RC: In a world under constant threat of terrorism, how would you characterise the importance of implementing robust**

**customs security practices? What role do initiatives such as Authorised Economic Operator (AEO) and Customs-Trade Partnership Against Terrorism (C-TPAT) play?**

**Antonini:** Robust customs security practices are certainly an important concern in recent times. As such, export controls already play an important role in the requirements to be met by an exporter in order to be granted AEO status, at least in theory. Indeed, the SAFE Framework has contributed to the global acceptance of the importance of export controls, for instance on dual-use items. As far as the benefits of the AEO status are concerned, these could also impact export control procedures. Since an AEO has demonstrated to adhere to appropriate compliance standards, it makes sense that the checks of its compliance with export controls become less burdensome.

**Schwechter:** C-TPAT and related foreign initiatives are important and bear some credit for the fact that there have not been any significant terrorism-related events resulting from imported merchandise. However, at least in the US, some have questioned whether the benefits provided to members, such as decreased inspections on entry, are worth the costs and effort needed to join the program. That said, particularly with CBP's signing of Mutual Recognition Agreements with other countries, C-TPAT- membership benefits continue to increase. Moreover, there are two other significant reasons why companies become C-TPAT members. First, in the event that another significant terrorist incident should occur, entries of imported merchandise are likely to be limited, at least at first, to C-TPAT members. Second, many vendors and customers have a company policy of dealing only with C-TPAT members.

**Mojica:** Companies should take steps to secure their supply chains for a host of good reasons. Whether to join a voluntary supply chain security partnership such as AEO or C-TPAT is separate issue. Participating companies must comply with rigorous requirements, such as annual security assessments and validations, whereas the benefits offered in exchange are appealing in theory but not always tangible. For example, US Customs offers C-TPAT importers a reduced number of inspections and reduced border wait times. While that may be true, a low-risk importer whose shipments are rarely examined may find that the cost of complying with the program's requirements outweigh the benefits. In the end, whether to join a voluntary supply chain security partnership is a business decision.

**Kanas:** The increasing internationalisation of supply and production is being followed by increasingly complex regulatory frameworks

designed to protect national interests. The threat of terrorism is contributing to a more comprehensive customs control at an operational level. The development of security practices under trade compliance programs may identify potential compliance issues with such broad national customs legislation, including import and export controls, the incidence of customs irregularities and possible applications of sanctions. The seriousness of the penalties potentially applicable can significantly impact the involved companies and third parties, resulting in relevant liability. Cooperation by companies under C-TPAT and the conformity with the rigorous AEO reduces the resources customs authorities use on controlling the import and export operations. As a result, more resources are becoming available to review sensitive operations and companies with a higher risk profile.

**Neuschul:** When relating the supply chain security practices to the evolving role of customs enforcement, it becomes evident how important it is to implement robust security practices. The security aspect of customs enforcement was a driver to the evolving role of customs as trade facilitator, and these programs are the key to customs efforts to play a much more efficient role in trade facilitation rather than just compliance enforcement. In the early days, importers were challenging the benefits an organisation gains by implementing stricter security practices, but now it is clear that getting certified under C-TPAT, AEO and other similar programs has benefits that far exceed the efforts necessary to design and implement such programs.

**RC: What benefits can companies gain from duty relief programs and free trade agreements? How can they ensure they are maximising these benefits?**

**Mojica:** Companies can utilise duty suspension legislation, duty deferral programs and free trade agreements to lower the landed cost of imported merchandise. Whereas duty suspension legislation

temporarily suspends the imposition of duties on certain items that are no longer manufactured domestically, duty deferral programs such as Foreign Trade Zones (FTZs), bonded warehouses and temporary importations under bond offer companies the opportunity to defer, limit or reduce their duty liability. For example, a company that utilises an FTZ can increase cash flow by delaying duty payments on imports, as no duties or fees are owed until the merchandise leaves the FTZ, and may reduce or even eliminate the need to pay duties altogether for imported merchandise used in the manufacture of products that are ultimately exported. Similarly, FTAs provide duty free treatment to qualifying products. Companies must understand the rules that apply to each of these programs in order to maximise the benefits they offer and avoid being penalised for non-compliance with those rules.

**Neuschul:** The proliferation of FTAs and other duty relief programs have had a huge impact on some companies in terms of cost savings. The crucial question here is: do we know with certainty how big such savings are, and can we present to management that these savings are material to the organisation and exceed the costs of administering such programs? I have often been surprised by the ways in which customs professionals fail to provide good answers to that question. Often the additional costs of maintaining compliance, human resources, system requirements and recordkeeping for a well-managed duty relief program are overlooked. On the flip side, even if the program is producing benefits, not having good metrics to present to management will possibly result in a lack of resources to manage the program well. So, in conclusion, duty relief programs have to be approached with caution and the full understanding of both costs and benefits needs to exist before a program is implemented.

**Antonini:** Companies, especially those utilising global production chains, can gain considerable benefits from duty relief programs and FTAs. By analysing the source of their inputs, the various sites

of their production facilities and finally the location of their customers, such companies can significantly reduce costs. Taking optimal advantage of duty relief programs and FTAs might imply the need to change the sources for their inputs or, where possible, relocating existing production facilities or carefully analysing the location of new production sites, depending on the relevant rules of origin. In order to maximise such benefits, it is important to take into account the interaction between various FTAs as well as duty relief programs. The possibility to benefit from NAFTA in combination with enjoying the benefits from certain duty relief programs is, for instance, subject to a number of limitations.

**Schwechter:** As the Doha Round of World Trade Organisation negotiations have increasingly foundered, the US has turned, more and more, to FTAs as the basis of its trade liberalisation strategy. The US has FTAs with about 20 countries, including major trading partners Canada, Mexico, Korea and Australia. The TPP and TTIP which are now being negotiated will, once concluded, expand duty free trade to other major trading partners such as Japan and the EU member states. The benefits from FTAs and other duty savings programs can be very significant – the elimination of customs duties and fees, for example. For FTAs, the key for importers is making sure that rules of origin requirements are met so that benefits can accrue. Under the various FTAs, it is not sufficient merely to ship goods from one member country to another member country to have them qualify for benefits – they must be made in a member country. Such determinations of origin require rigorous compliance procedures for identifying the origin of components and their tariff classifications, and, in some cases, a cost analysis, as well.

**Kanas:** Tariff reductions allow companies to structure their operations in accordance with the best environment of the production of each of the inputs of the final good, thus creating global value chains. When tariffs are high, it is not advantageous to produce parts of the product in several different countries, because for each transaction there will be a larger amount of duties to be paid. However, globalising production becomes possible when tariffs are low or zero. In order to maximise these benefits, companies should analyse which location offers the most benefits and the lower cost to the production of each part of the product in order to plan a decentralised production chain.

### RC: What methods should importers/exporters employ to ensure that they do not forego any negotiated benefits while talking advantage of multiple trading agreements?

**Neuschul:** In essence, a deep analysis of the full palette of agreements has to include factors such

as tax benefits and risks, compliance costs and any special arrangements the company enjoys. The challenge here is ensuring a good understanding of all of these factors exists when these processes are considered. This is best done by forming cross-disciplinary teams which include customs, finance, tax, logistics and legal expertise, so that benefits are considered comprehensively against all applicable costs. In the past five years or so, tax aligned supply chain designs have gained much more attention. Analysis input is key. To provide a concrete example, implementing a transfer pricing concept that will optimise tax benefits in a given country might be completely wiped out by the customs duty increase the design might trigger if the dutiable value increases.

**Kanas:** The multiplicity of FTAs may lead to the corrosion of preferences previously negotiated. When a trade agreement is negotiated, the exporter benefits from duties and rules more advantageous than the ones applied to exporters from other origins, but when several different exporters are subject to lower tariff duties this means, in practice, that the exporter no longer has any advantage compared to its competitors. The way to avoid such an effect is to negotiate new rules within these agreements, and therefore prevent newer agreements negotiated with third parties from presenting more beneficial conditions than the previous agreements. These negotiations must include deep integration rules, which allow, besides tariff reduction, regulatory coherence among the countries. Regulatory barriers are important obstacles for free trade and harmonising trade partners' legal regimes helps to mitigate the negative effects of this kind of trade barrier.

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*Mel Schwechter, BakerHostetler*

**Mojica:** The key to taking full advantage of FTAs is to understand the rules of origin used to determine whether a product qualifies for preferential treatment. It comes as a surprise to some that the origin of a product is not necessarily the country where it is assembled. Navigating the FTA-specific rules of origin is no easy task, but companies that understand those rules tend to avoid common errors, such as the improper completion

of certificates of origin, and are able to modify their supply chains in order to qualify their products for preferential treatment under the various FTAs.

**Antonini:** The proliferation of FTAs is often referred to as a 'spaghetti bowl', as the number of FTAs is drastically increasing, often with markedly different substantive and procedural rules. It is therefore important for companies to be aware of all procedural requirements under each relevant FTA, in order to ensure that they can take full advantage of the preferential treatment conferred thereunder. Unfortunately, this is not an easy task, as the spaghetti bowl of FTAs may create confusion. Companies should therefore carry out a detailed analysis of all relevant procedural requirements of each and every FTA concerned.

### RC: Have you seen an increase in international trade disputes? Are there any common issues that seem to surface frequently?

**Kanas:** International trade has become increasingly regulated. Countries' economies are becoming more integrated, trade flows have presented substantial growth and trade rules now deal with matters previously left to the exclusive jurisdiction of each state. In this context, an increase in trade disputes is natural. The number of disputes under the WTO dispute settlement body has grown in the past few years and the number of dispute settlement mechanisms under regional and bilateral trade agreements is rising – although the number of actual disputes is still limited. Trade disputes frequently deal with matters related to import restrictions, antidumping, subsidies, and trade related themes such as security, health and environmental protection issues.

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**Mojica:** The rise of protectionist measures in Latin America is an interesting development that has resulted in international trade disputes recently. For example, Argentina has implemented a number of tariff and non-tariff barriers which affect the importation of goods, including automatic and non-

automatic licence requirements and the requirement that companies offset the value of imports with equivalent exports. These measures were challenged at the WTO by a coalition of countries, including the US and the EU, and were recently found to be in violation of the WTO's rules. Other Latin American countries have implemented similar protectionist measures, including Brazil. As a result, companies are starting to pay more attention to other export markets in the region.

**Antonini:** At the level of the WTO, disputes have been steadily increasing. While the EU and the US remain the most frequent users of the WTO dispute settlement system, recent years have seen a steady increase in the use of the system by developing countries, and especially the emerging economies. Interestingly, there is also an increase in disputes between developing countries. While the most publicised disputes relate to environmental and health issues, such as the *US vs. Tuna II (Mexico), EC vs. Seal Products* and the *US vs. Clove Cigarettes and Australia vs. Tobacco Plain Packaging* disputes, the majority of WTO disputes still concern trade defence instruments, such as anti-dumping, anti-subsidy and safeguard measures.

**Neuschul:** Trade disputes are frequently driven by a much wider political perspective, and should probably be viewed on a more comprehensive level by trade professionals. For example, trade disputes that are arising as a result of the widening gap between Russia on the one side and the Western European countries and the United States on the other include both customs as well as export controls related issues, taking in OFAC and similar sanctions, and as such impact companies on multiple levels. Keeping this in mind, probably the most important conclusion is that companies have to be able to comprehensively view how these disputes impact them and so they must be prepared to adapt to the ever changing landscape of international relations.

**RC: What strategies can companies employ to hire, develop and train talent globally? Which jurisdictions are most challenging when it comes to hiring trade professionals?**

**Schwechter:** There are a number of steps companies can take to hire, develop and train talent globally. First, companies should retain reputable head hunters that have particular experience in the trade compliance area. Second, trade compliance personnel should have certain minimum levels of education, and some understanding of international trade. Third, companies should have a proper training program in place to provide guidance and establish a corporate culture of ethical conduct, so that any bad habits employees may have learned at other employers are not carried over. The

jurisdictions that are most challenging are those with high rates of corruption and low levels of education. Companies need to view trade professionals and compliance as critical to the success of the company and remunerate those employees appropriately, or else they will have to confront frequent turnover problems, and not get the quality of personnel they will need to be able to rely on to do their jobs properly.

**Antonini:** Due to the relevance of actual practice as implemented in different jurisdictions, experience is still one of the most important items in the area of customs. Thus, it is crucial to set up an efficient and well devised training system, with specific instructions concerning different jurisdictions, based on practical experience gained in the field.

**Neuschul:** In the past two to three years, companies have definitely gone back to take a hard look at their trade compliance designs and their resources-at-hand in order to be effective and have true impact on the business. A trend exists for redesigning trade groups to be focused around regional Centres of Excellence, which are managed from a higher, centralised corporate role. This trend has caused the need for higher level management roles in trade compliance in the different regions. Fulfilling this need is the single largest challenge for hiring and retaining talent outside of established jurisdictions, as the management functions within trade compliance have traditionally resided in those countries. Some companies are resorting more and more to in-house training and internal international assignments to address this need rather than depending on hiring from outside.

**Mojica:** It is more challenging than ever to comply with the many and complex laws which apply to the import and export of merchandise around the world. Against that backdrop, the value of having an effective, in-house trade compliance program is hard to dispute. Moreover, it is important that the trade compliance professionals who run the program understand the inner-workings of the company and are able to communicate the value of trade compliance to their colleagues in other departments. It is generally easier to hire trade compliance professionals in jurisdictions with well-established trade laws because the talent pool is larger. Ease of recruitment may also depend on the size of the company. Smaller companies with a limited trade compliance staff, or in which trade compliance is a shared function with other duties, often face recruitment and retention challenges.

**Kanas:** Hiring, developing and training talented lawyers to be experts in international trade has become a real challenge in recent times, in light of the increasing complexity of international trade and customs issues in Brazil. In fact, practical issues related to international trade and customs

are not part of the university curriculum in Brazil. Therefore, lawyers should be prepared, and willing, to work with a branch of law that is mostly based in very technical legislation and the professional's experience. Sensitivity to political issues, as well as good all round knowledge of international relations and economics is desirable. Creativity and a good background in international public law and in international private law, as well as complimentary education in foreign countries, are also very important. Companies should be able to attract professionals with this profile, providing an international environment for the company, and stimulating a broader focus than just corporate law, including politics, economics and international relations in the day-by-day routine.

**RC: What advice can you offer to companies on developing and managing an efficient customs compliance program? How should they look to structure a trade compliance group within the organisation? In your opinion, should both export controls and customs compliance remain within the group, for example, and through which vertical – such as tax, legal, logistics – should the trade function report?**

**Antonini:** Both export controls and customs compliance should be in the same group and managed by the same head. It should be managed by logistics, with the assistance of legal in all steps of the process.

**Schwechter:** There are two keys to having an effective compliance program. First is the need to make sure that the importance of compliance is communicated from the top down through strong compliance policy statements by the board and senior management, and their appointment of an official to lead the trade compliance function with sufficient standing in the company so that others view him or her with the necessary respect and deference, and will respond positively to his or her requests. Moreover, if senior management addresses trade compliance in the performance reviews of

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their managers, they will get the message that the issue is critical to the company, and will act accordingly. The second key element of an effective compliance organisation involves the integration of the trade compliance function into the business of the company. Far too often, companies have dedicated and experienced trade compliance personnel who do their best to comply with all legal requirements; however, they are frustrated in their efforts because they are not informed, on a timely basis, of new business activities in which the company is becoming involved. They are thus unable to put in place necessary compliance measures to address those new activities. It is therefore crucial for trade compliance personnel to meet, on a regular basis, with all functional units in the company whose activities can impact trade compliance, including Sales, Purchasing, Shipping and Logistics, Finance and Accounting, IT, and Engineering/R&D, so that they can be updated as to business developments.

**Kanas:** Managing an efficient customs compliance program is a difficult task that should engage several departments of the company, such as tax, legal, logistics, customs, finance and human resources. Each of these departments should control a specific aspect of trade compliance, such as training professionals, controlling sales and payments, issuing documents, controlling shipments of goods, monitoring customs legislations both domestic and of the countries of destination of exports, controlling contracts with third parties and due payment of taxes, as well as managing third parties such as customs brokers and trading companies that act on behalf of the organisation. Export controls should be included in the scope of the trade compliance program, as it demands similar controls than the ones implemented for other customs aspects and should require the engagement of the same personnel.

**Neuschul:** Companies should structure their trade compliance programs in such a way that includes both customs and export controls responsibilities. Many activities within a company impact both areas, and having that visibility at a central point is key to being able to quickly recognise compliance challenges. This is amplified in cases where the company has a diversified set of stakeholders that the function impacts, such as third party manufacturing, multiple business units, 3PL and 4PL partners, heavy R&D, M&A, and so on. Additionally, having the function sit in a central vertical that has insight into all areas of business is also vital – tax, for example, has both a compliance and transactional focus. Many trade professionals will have stories to tell about the M&A integration that was a huge challenge, or the tough conversations the export controls compliance officer had with the engineering team on the latest R&D project. Hence, having a seat at the table in the early stages of any process in a company is important to help effectively

manage trade compliance as a whole, and being in a business or functional silo will not provide the necessary visibility.

**Mojica:** A company's customs compliance program must be grafted onto its business processes in order to be effective. The best model we have seen is one where the employees of various departments have been deputised to perform trade compliance roles. For example, the finance department reports retroactive price adjustments to the customs manager, accounts payable keeps track of reimbursements for tooling and materials provided to foreign vendors, the purchasing department is required to ask the customs manager to confirm the tariff classification of a product in order to procure it, and so on. It would be optimal to incorporate the trade compliance function report into the chief compliance officer or the general counsel. R&C