
Searching for New “Best Practices” for Export Compliance

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Agenda

- Need for standard “Best Practices”
- CEEC (“Coalition for Excellence in Export Compliance”)
- Nunn-Wolfowitz Report (July 25, 2000)
- Worldwide survey of export compliance guidance by governments
- Anti-Bribery and the problem of multiple “Best Practices”
- Paul McNulty’s Five Essential Ingredients of Corporate Compliance
- Using the “McNulty 5” in your regular work



Need for standard “Best Practices”

- Increase compliance by all types of exporters
- Reduce risk of a major gap in your program
- Answer the resource question: “How much diligence is enough?”
- Improve compliance in Joint Ventures and R & D Teams
- Establish common terms of reference for international projects
- Benchmark for enforcement matters and internal audits
- Evaluate remedial compliance measures

CEEC: “Coalition for Excellence in Export Compliance”

- Mission: *Identify and recommend export compliance best practices that provide practical guidance to better detect and prevent violations of law.*
- Informal group of volunteers
- Representing broad range: academia, federally funded research and development centers, industry, trade and professional associations, private legal practitioners, and consultants
- Led by Core Group:
 - John Priecko, President of Trade Compliance Solutions (Co-Chair)
 - Mark Menefee, Of Counsel, Baker & McKenzie LLP (Co-Chair)
 - Bill Reinsch, President, National Foreign Trade Council
 - Scott Jones, University of Georgia’s Center for International Trade and Security
 - Heather Sears, Vice President, Trade & Security Compliance and Associate Corporate Counsel, DRS Technologies, Inc.
 - Carol Fuchs, International Trade Regulation Counsel, General Electric Company (GE)
 - John Pisa-Relli, Legal Director for Trade Compliance, Thales USA
- Working Groups:
 - Group A (Pisa-Relli, Chair): focusing on comparative analysis of existing guidelines and standards.
 - Group B (Fuchs, Chair): drafting standards and procedures to succeed Nunn-Wolfowitz
- Please send us your comments and suggestions

CEEC: “Coalition for Excellence in Export Compliance”

Current membership:

- Group A: Margo Hammar, Director-Corporate Legal Compliance, Verizon Communications, Inc; Bobby Butler, Vice President & Chief Compliance Officer, Universal Weather and Aviation; Ralf Wirtz, Head of Global Trade Control, Oerlikon; and Scott Sullivan, Vice President-Global Trade, Compliance & Corporate Inquiries, Flowserve Corporation.
- Group B: Ben Lindorf, Associate Counsel & Export Compliance Manager, Institute for Defense Analyses; Aaron Gothelf, International Trade Counsel, Tyco International; Jahna Hartwig, Principal Compliance Officer, Associate General Counsel for Exports, Johns Hopkins University Applied Physics Laboratory; David Hayes, Director, David Hayes-Export Controls; Matt Henson, Manager, Trade Automation & Systems Integration, ITT Corporation; Doug Jacobson, President, Law Offices of Douglas N. Jacobson, PLLC; Jeff Merrell, Vice President, Global Trade Compliance, Rolls-Royce North America Inc.; Vera Murray, Director, Governmental Programs, IBM Corporation; Phil Poland, Director, Export Control & Trade Integrity, DHL Express (USA), Inc.; Stephanie Reuer, Director, International Policy & License Administration, The Boeing Company. Jeff Schwartz, Senior Associate, Alston & Bird LLP; and Natalia Shedadeh, Director, Office of Global Compliance, Weatherford International Ltd.



Nunn-Wolfowitz Report (July 25, 2000)

- “Blue Ribbon” task force commissioned by Board of Directors of Hughes Electronics Corporation
- Purpose: recommend changes in Hughes’ operations and procedures “that may be necessary or desirable to ensure that it has in place a ‘best practices’ standard for complying with the letter and spirit of U.S. export control laws and regulations.”
- Widely considered the “Gold Standard” for export compliance
- Now needs updating and made global

Worldwide survey of export compliance guidance by governments

- See Baker & McKenzie handout, “Database of Best Practices for Export Compliance Programs”
 - So far it covers US (EAR, ITAR, FTR), UK, Canada, Japan, France, Spain, Singapore, Hong Kong, & China
 - Organized with reference to Nunn-Wolfowitz BPs
 - Click on icons to go to original government source materials

Anti-Bribery and the problem of multiple “Best Practices”

USSG’s 7 Elements of an Effective Compliance Program	13 Good Practices by the OECD on Internal Controls, Ethics, and Compliance	UK’s 6 Principles for “Adequate Procedures”
1. Standards and procedures to prevent and detect criminal conduct	1. Risk assessment as basis for effective internal controls and compliance program	1. Risk assessment
2. Leaders understand / oversee the compliance program to verify effectiveness and adequacy of support; specific individuals vested with implementation authority / responsibility	2. Policy that clearly and visibly states bribery is prohibited	2. Top level commitment
3. Deny leadership positions to people who have engaged in misconduct	3. Training – periodic, documented	3. Due diligence
4. Communicate standards and procedures of compliance program, and conduct effective training	4. Responsibility – individuals at all levels should be responsible for monitoring	4. Clear, practical and accessible policies and procedures
5. Monitor and audit; maintain reporting mechanism	5. Support from senior management – strong, explicit and visible	5. Effective implementation
6. Provide incentives; discipline misconduct	6. Oversight by senior corporate officers with sufficient resources, authority, and access to Board	6. Monitoring and review
7. Respond quickly to allegations and modify program	7. Specific risk areas – promulgation and implementation programs to address key issues	
	8. Business partners due diligence	
	9. Accounting – effective internal controls for accurate books and records	
	10. Guidance – provision of advice to ensure compliance	
	11. Reporting violations confidentially with no retaliation	
	12. Discipline for violations of policy	
	13. Re-assessment – regular review and necessary revisions	
NOTE: A general provision requires periodic assessment of risk of criminal conduct and appropriate steps to design, implement, or modify each element to reduce risk		

Prepared by:
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Chair, Global Compliance
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Paul McNulty's Five Essential Ingredients of Corporate Compliance

Leadership

Risk Assessment

Standards and Controls

Training and Communication

Monitoring, Auditing and Response

Using the “McNulty 5” in your regular work

The Essential Ingredients of Corporate Compliance (Paul McNulty – Baker & McKenzie)	US Sentencing Commission’s 7 Elements of an Effective Compliance Program	Nunn-Wolfowitz Industry “Best Practices” Regarding Export Compliance Programs
Leadership	1. Standards and procedures to prevent and detect criminal conduct	1. Management Commitment
Risk Assessment	2. Leaders understand / oversee the compliance program to verify effectiveness and adequacy of support; specific individuals vested with implementation authority / responsibility	2. Compliance Council
Standards and Controls	3. Deny leadership positions to people who have engaged in misconduct	3. Export Compliance Personnel
Training and Communication	4. Communicate standards and procedures of compliance program, and conduct effective training	4. Export Compliance Instruction Manuals
Monitoring, Auditing and Response	5. Monitor and audit; maintain reporting mechanism	5. Export Compliance Intranet Site
	6. Provide incentives; discipline misconduct	6. Training and Education
	7. Respond quickly to allegations and modify program	7. License Application Process
	NOTE: A general provision requires periodic assessment of risk of criminal conduct and appropriate steps to design, implement, or modify each element to reduce risk	8. Implementing License Authorizations
		9. Handling Foreign National Issues
		10. Recordkeeping
		11. Audits
		12. Handling Suspected Violations



Thank you.

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