

# TEXAS LAWYER

March 7, 2011

An **ALM** Publication

## PRACTICE FOCUS

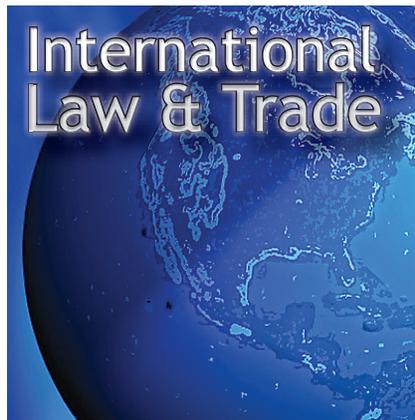
### ESTABLISH AN EFFECTIVE EXPORT-COMPLIANCE PROGRAM

BY **ROBERT L. SOZA JR.**

Many U.S. manufacturers seek to increase revenue by marketing and selling goods and services to foreign buyers. Whether a company has been exporting its products for years or is just beginning to do so, company lawyers must pay close attention to the complicated and nuanced U.S. export-control regimes. The only way to ensure client protection is to establish and implement an effective export-compliance program.

A common misconception is that an in-house attorney need not concern himself with U.S. export regulations if his company delivers its products to an address within the United States. However, multiple U.S. export-control requirements come into play if a company's actions indicate that it knows its goods will be exported abroad, such as by delivering products to a U.S. port. U.S. export-control regulations apply when the buyer intends to export goods, and they require a U.S. company to ensure that the government permits it to export 1. its goods 2. to the buyer 3. in a particular country.

When determining whether the federal government permits a U.S. company to export its goods, technologies or related services, in-house lawyers should review the U.S. Department of Commerce Bureau of Industry and Security's Commerce Control List at 15 C.F.R. 744 and the U.S. Department of State Directorate of Defense



Trade Controls' U.S. Munitions List at 22 C.F.R. 121.

These lists indicate whether the lawyer's company must obtain a license to export those goods or technologies. The Commerce Control List targets civilian technology that may have military or strategic use, while the U.S. Munitions List targets items that have military application. The mere disclosure of technology (such as schematics, diagrams and blueprints) controlled under these lists to a foreign person may constitute an export under U.S. regulations, requiring a license from the U.S. government.

President Barack Obama's administration has proposed reforms to simplify and unify these lists, with the ultimate goal of giving one agency sole responsibility for issuing licenses. In-house counsel should keep in mind that any effective export control program will involve classifying all of a company's goods and services sold or

manufactured to determine if either list describes that technology.

Before selling to a buyer who intends to export the goods, U.S. companies must determine whether the government permits them to sell their products to that buyer. Various federal government agencies prohibit U.S. exports or transactions that may facilitate export to certain persons, organizations and entities identified in what lawyers commonly refer to as the "prohibited lists."



Statutes and regulations also impose embargoes prohibiting exports to certain countries. The U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) manages the U.S. embargo program that restricts

actions, such as holding employees accountable under a graduated disciplinary program and voluntary self-disclosure.

If a company does not have an export-compliance program, in-house

employees, consultants and overseas agents whose responsibilities include international sales, marketing, exporting or hiring of foreign nationals. Training sessions should be in-person and interactive. Fill sessions with real-world scenarios involving facts and circumstances tailored to the employees' daily responsibilities. Trainees will benefit substantially more from this type of interactive session than in the traditional passive learning environment. Through interactive training, employees will understand better how day-to-day activities trigger regulatory implications, thereby reducing the risk that the company will violate export control regulations.

While it is often difficult to obtain senior management commitment to developing an export-compliance program, in-house counsel simply cannot afford to let their clients sell their products and services internationally without such a program in place. Penalties for failure to comply with these requirements may result in the loss of export privileges, fines and imprisonment, not to mention damaging publicity.

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exports to countries like Iran, North Korea, Cuba and many others.

### GET WITH THE PROGRAM

Violations of U.S. export-control regulations can result in fines and imprisonment. Creating and implementing an export-compliance program minimizes the risk of noncompliance and may reduce penalties in the case of a violation.

An effective compliance program requires: 1. management commitment; 2. continuous risk assessment; 3. a written policy and procedures manual; 4. ongoing training of employees; 5. ongoing screening of employees, contractors, customers, products and transactions; 6. recordkeeping; 7. periodic audits; 8. an internal program for reporting and escalating export violations; and 9. appropriate corrective

counsel should evaluate whether previous sales have violated export-control requirements. In such a case, lawyers should begin by conducting an audit of the company's foreign buyers, the countries to which it exports and the types of products the company is exporting. An effective audit will look for red flags and ascertain the day-to-day scenarios employees face when marketing, selling and exporting products abroad.

Audit results should help lawyers formulate the company's written export policies and procedures manual. An effective export-compliance program includes continuous risk assessment and regular spot audits to ensure compliance.

Lawyers for companies involved in international business also should consider training all officers, directors,



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