

How to build a great compliance program for your U.S. imports

For the importer of record, compliance means the complete and accurate recording of all internal processes through books and records, from procurement to payment (P2P). Compliance means following Customs laws and regulations on both imports and exports. Good compliance facilitates the movement of trade at the border. For the government, it ensures security through quality trade data, the proper collection of duties and taxes, the proper application of preferential duty tariffs, and the protection of target industries (e.g., textiles). For the importer, it prevents supply chain bottlenecks, costly production downtime, and errors that can result in expensive penalties.

Step 1: Define your compliance goals and costs

Compliance is not a one-time event. It is an ongoing process that requires commitment and resources. Businesses that make the commitment for ongoing excellence in compliance understand the benefits of a positive relationship with Customs authorities: good compliance supports their business goals.

Tighter alignment between business policies and regulations means:

- Better visibility of the import process, leading to opportunities such as improved costs, better controls, and fewer resources required
- Reduced border inspections and clearance times
- Improved management of service providers, leading to reduced transportation costs
- Increased efficiency by automating manual tasks
- Eliminated need to transmit data for each transaction



Learn these 10 easy steps to ensure compliance for your U.S. imports.

A commitment to cost reduction and revenue recovery through sound compliance results in:

- Fewer border delays, and subsequently lower transport and inventory costs
- Potentially lower duty payments through correct use of applicable Free Trade Agreements (FTAs)
- More visible duty drawback and tax recovery opportunities
- Sourcing from countries with FTAs

An enhanced ability to manage business risks allows for:

- Reduced penalties, fines, and interest costs, relating to non-compliance
- Reduced professional fees, relating to non-compliance
- Reduced management hours spent reacting to non-compliance and customs audit preparation
- Reduced overpayment of duties and taxes

Improved accountability means:

- Compliance efforts meet governance and Sarbanes-Oxley Act (SOX) requirements
- Protected company name and reputation (loss of revenue avoided)
- Facilitated cross-border trade
- Sound policies and procedures set common, uniform goals
- Demonstrable management commitment to customs compliance

Step 2: Gain management’s commitment with a strong business case

The commitment of senior management is critical to a successful compliance program. Management’s understanding of both the benefits of great compliance and, conversely, the implications of risk associated with non-compliance will affect every department within an organization. While the evolving business environment clearly endorses sound customs compliance practices, many customs managers find themselves in a position of having to convince their senior management of the importance of a compliance commitment. The potential cost of penalties alone can motivate the investment in compliance, but most senior decision-makers will want to consider a clear business case (Table 1).

Building a compelling business case

Describe the current state	<ul style="list-style-type: none"> Determine the risks of non-compliance (fines, operational constraints, damage to the company’s reputation, etc.) What are the gaps? Get perspectives from all involved (supply chain, finance, transportation, purchasing, etc.).
Describe the project scope	<ul style="list-style-type: none"> Describe the material gaps in detail and how the project will address them.
Itemize the desired results	<ul style="list-style-type: none"> What business results are you hoping to achieve? How will going from non-compliant to compliant help the business?
Highlight the financial opportunities	<ul style="list-style-type: none"> How much can moving to sound compliance practices help you recognize opportunities and gain from drawbacks, duty management, FTAs and Foreign Trade Zones (FTZs)?
Summarize the economic benefits	<ul style="list-style-type: none"> What are the financial gains of an efficient compliance program with streamlined processes? What is the value of avoided risk and penalties? Work out the ROI $\left(\frac{\text{total benefits} - \text{total cost}}{\text{total cost}} \right)$

Table 1

Step 3: Create a compliance group

Your compliance group is not just your Customs department. It’s much more.

To be compliant, you need to be proactive, not reactive. And to be truly proactive, you need to engage the other departments in your company. They need to understand how their actions and activities will impact compliance.

Let’s look at a simple example: The shipping department receives 10 widgets, instead of the 12 widgets that were on the purchase order. Shipping may notify the accounts payable department to short-pay the invoice, but they might not think of contacting the customs department to adjust the customs paperwork. You are no longer compliant and your risk level is increasing.

Procurement to payment (P2P) process

The P2P process must ensure that the product, value, and quantity are reported accurately. As your company contracts for materials or goods, receives them, and makes payment, the associated documentation touches several departments and systems. Many departments in your company are part of the P2P process for your imports (Figure 1).

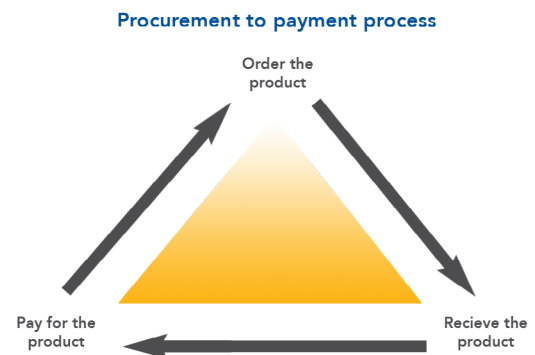


Figure 1

Key departments that affect customs compliance

Several departments performing their regular functions can influence your level of customs compliance and should therefore be stakeholders in your compliance group (Figure 2).

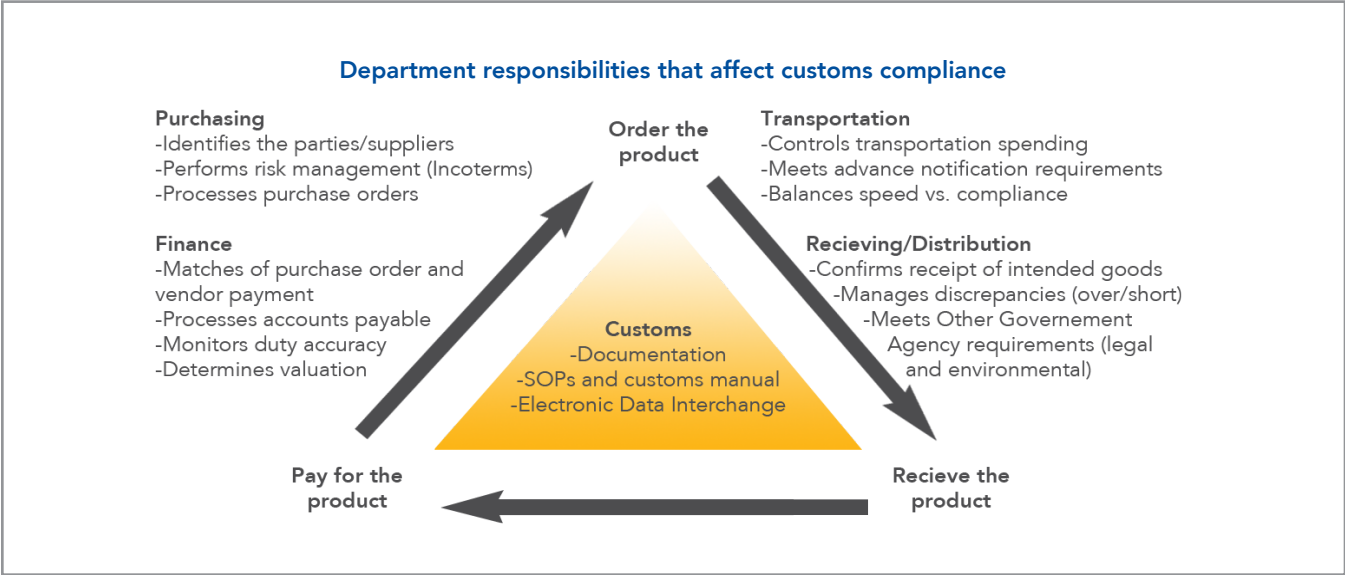


Figure 2

Step 4: Establish training programs

Regular training should be provided for all staff members that impact customs compliance processes. All functional areas that touch the procurement to payment (P2P) process should have training for trade awareness. Compliance measures and industry trends continue to evolve, regulations change, and new programs are introduced. Training is an opportunity, not only to stay abreast of the latest requirements, but also to learn about best practices that can help address these changes.

Step 5: Develop formal policies and SOPs

Internal process documents and Standard Operating Procedures (SOPs) are critical for internal compliance staff. They help to set and maintain the standards for compliance throughout your entire organization.

Probably the most important document to develop and keep updated is your customs manual. This manual will fully document all aspects of your compliance program and should be customized to your company and environment. A comprehensive and updated manual will help you meet your compliance obligations, and manage your risk and liability (Table 2).

Company overview	Internal processes
<ul style="list-style-type: none"> • Profile of company and all products • Trading partners and countries • Organizational structure of company • Annual reports • IT and Enterprise Resource Planning system overviews 	<ul style="list-style-type: none"> • Purchasing • Receiving • Accounts payable • P2P cycle and audit
Customs programs	Reference material
<ul style="list-style-type: none"> • Valuation • HTS classification • Origin/FTA certification • Customs entry audit 	<ul style="list-style-type: none"> • Locations • Contact information • Customs rulings • Correspondence • Internal audit results • External audit reports

Table 2

Step 6: Stay informed of new regulations
Customs laws and regulations are constantly changing. These changes may impact your practices, procedures, and compliance level.

All countries are influenced by political concerns about security in their global trading networks, and therefore continue to introduce new initiatives. In addition, new FTAs between individual countries continue to be introduced. It's very important to know about changes within the industry, in order to take advantage of preferential duty tariffs; avoid becoming inadvertently non-compliant with newly introduced regulations or tariff changes; and participate in new Customs programs for seamless delivery and a competitive advantage.

Step 7: Communicate with stakeholders and suppliers

Communications must be open and ongoing. Avoid risk and liability by ensuring that everyone understands the same requirements, at the same time. The activities of your entire supply chain can impact your compliance – from your suppliers providing Certificates of Origin through to your carrier companies loading your goods with other companies' goods for border crossing. As the importer of record, you are ultimately accountable for the accuracy of information provided to Customs and for ensuring compliance with Customs regulations.

In addition to educating internal stakeholders about compliance through a compliance group, Standard Operating Procedures (SOPs), and training, also ensure that external partners understand the requirements. With the advent of programs such as C-TPAT, Customs authorities continue to push compliance and security responsibilities down the supply chain. All partners – vendors, suppliers, customers, and carriers – contribute to compliance, but it is the importer of record which is accountable.

Provide discipline and structure to your third-party associates:

- Communicate your company's philosophy and approach regarding international trade
- Establish formal SOPs (compliance requirements) and metrics to clearly outline your expectations
- Develop contract language on purchase agreements and include a purchase protection clause (see box below)
- Work together to develop controls that will ensure transactions are valid and accurate
- Meet on a regular basis to evaluate procedures and address issues

A purchase protection clause in your purchase order or agreement with a supplier may include the following statements:

- Exporter will cooperate with Customs if information is requested
- Exporter will provide valid Certificates of Origin for goods
- Exporter will provide reimbursement to you for any costs associated with invalid documentation, including additional duties paid and applicable interest and penalties

Step 8: Commit to the audit process

When you commit to auditing (whether it's a post-entry process or regular selfaudits) as part of your compliance program, you exercise reasonable care and due diligence. Auditing is a critical component of testing your compliance level. By uncovering gaps and correcting errors, you manage your risk and liabilities (Figure 3).

Self-audit

Establish a process to self-audit your trading activities on a regular basis. Use an internal audit team or, where lacking expertise, an external service provider. Your self-audit should be performed at least annually. Depending on changes in rules and regulations by Customs authorities, you may require a mid-year audit. Changes in your organization, or the introduction of new products or partners, may also warrant the initiation of an audit.

Customs audit

Customs authorities are publicly saying that, eventually, every importer will be audited. All across North America, Customs authorities have made changes to their audit approach:

- Increased the number of audits they conduct.
- Increased the use of penalties.
- Introduced smaller, more targeted, and single program audits, in addition to their full and comprehensive audit process.
- Began focusing on smaller importers that have fewer resources to invest in sound compliance programs, controls, and the people to manage them,
- Began returning to conduct a secondary audit, 12 to 18 months after an initial audit to confirm that recommended changes have been implemented.

The results of a Customs audit can include recommendations, duty adjustments going back four years, and financial penalties. Penalties are graduated, and match the severity and frequency of the contravention.

Plan to be audited:

- Keep your customs manual accurate and current. It's the first thing Customs will want to see.
- Review your compliance process to confirm that you have appropriate systems and controls in place.
- Ensure that there are process and system linkages through each department.



Figure 3

- Ensure that you can tie all of your documentation through the procurement to payment (P2P) cycle.
- Check your financial links, and ensure that all financial statements and agreements are accessible.
- Ensure you have documented methodology for your HTS classification supported by previous rulings, third-party opinions, specification sheets, or samples.
- Test a few of your typical transactions. If you're claiming NAFTA, or any other FTA, verify that the information (classification, valuation, country of origin) is correct, and that you can retrieve all of the associated records to support your claim.
- Ensure that recommended changes have been implemented. If you have already been audited, address outstanding issues such as binding rulings, protests and petitions, duty relief claims, and voluntary disclosures.
- Consider a third-party audit to gauge your compliance level, and identify gaps before Customs does.

Step 9: Ensure complete record keeping

You are legally required to maintain records. Establishing and maintaining a record-keeping system that forms an audit trail, through your procurement to payment (P2P) process contributes to your compliance. You must also be able to retrieve these documents in a timely manner.

As the importer of record, you are required to maintain your books and records for each transaction for a number of years. If you are acting as the importer of record in another country, then you need to abide by that country's Customs rules. For example, you must maintain your documentation for five years in the United States, but for other countries you may be required to hold documents for six years.

Maintenance of records can be done in two ways. Electronic record keeping through imaging technology is acceptable as an alternative to hard copy files. Involve your IT department to ensure your company's electronic data and systems have

proper backups. You may also outsource your record keeping to a trade partner, such as your customs broker. A complete list of documents required in the United States (known as the "(a)(1)(A) list" from Treasury Directive 96-1, is available.

Retrieval of documents on demand

U.S. Customs authorities have moved away from allowing importers time to produce or find a requested Certificate of Origin. More frequently, failure to produce the documents upon request is leading to an immediate penalty of \$10,000 per infraction for non-compliance and up to \$100,000 per infraction for fraud.

The location(s) of your records should be carefully documented in your customs manual. For publicly traded companies, this is also a strict requirement under the Sarbanes-Oxley Act. To address potential gaps in your record keeping. For example, staff changes frequently result in lost records. In addition, your service providers and suppliers will often have the records you need, so advise them of the requirements and ensure that they are able to meet them.

Step 10: Build in security measures

Countries need to ensure that their borders are secure and that cargo entering is free from terrorist threat and illegal activities. In addition to creating an effective compliance program that supports the financial integrity of your business, companies must also invest in security. All businesses need to be aware of the risk of transforming common items into tools for terrorism. This threat is not focused on specific commodities, and can extend to seemingly innocuous materials. For example, commodities such as food and drugs can easily be contaminated. Companies need to pay close attention to who manufactures the materials, as well as who packs, ships, and handles their merchandise, throughout their entire supply chain.

The importance of security must be communicated to all trading partners in your supply chain. Programs such as C-TPAT institutionalize security into your overall compliance program. And while programs such as this are still voluntary, they will likely evolve to become mandatory. Participating in C-TPAT certification allows you to highlight vulnerabilities in your own supply chain, but also may result in identifying opportunities that can streamline your process. It is recommended that drive and oversee security initiatives for your company. The commitment and responsibility begins with senior management, but the message has to flow through to every employee, at every level. Ensure that there are process and system linkages through each department.



Compliance Readiness Checklist

Respond to the following statements to gauge where your company stands with respect to a great compliance program. For statements where you score yourself "somewhat" or "no," take the time to review and address potential gaps in your compliance program.

	Yes	Somewhat	No
1. We have clearly defined goals to achieve good compliance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Management has committed the resources required for good compliance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. We have a compliance group, not just a customs department.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Other departments understand how they contribute to compliance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Any shipment can be tracked through the procurement to payment (P2P) cycle by a unique identifier.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. We have regular training to support our compliance efforts.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. We have internal Standard Operating Procedures (SOPs).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. We have SOPs for our suppliers and service providers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. We adjust our SOPs and update our processes, as required.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. We have an up-to-date customs manual.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. We monitor regulatory changes and communicate them internally.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. We use technology (e.g., EDI, imaging, online compliance documents).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. We regularly self-audit to test our compliance and documentation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. We verify the information (e.g., origin, HTS) supporting our NAFTA or FTA claims.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. Our HTS methodology is documented for existing and new products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16. We have an established post-entry process.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17. We have addressed outstanding issues from previous customs audits.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18. We have a record-keeping process and can pull documents on demand.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19. We have addressed security in our supply chain (e.g., C-TPAT).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20. We outsource for expertise or to assess our compliance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>