

# Heavy fines spark demand for products that will keep companies out of trouble

## *A fast-growing sector in global trade management*

By Rosalind McLymont

In March, ITT Corp. became the first major defense contractor convicted of a criminal violation of the Arms Export Control Act. ITT agreed to pay a \$100 million penalty, one of the largest ever paid in a criminal case, for sending defense-related technical data to Great Britain, China and Singapore without having first obtained a license or written authorization from the State Department. ITT also was charged with omitting material facts from Arms Exports Required Reports.

"ITT settled. You see \$20 million, \$40 million in penalties, primarily on the Defense side. But all around the penalties are increasing," said Joan Koenig, counsel to the law firm Drinker Biddle Gardner Carton LLP. Penalties for filing incorrect reports with the Census Bureau area set to increase to \$10,000, up from \$1,000, as are penalties for violating the Office of Foreign Assets Control's embargo or sanctions regulations and for general violations under export administration rules, she said.

Facing a growing risk of having to pay seven- and eight-digit monetary penalties for export violations, U.S. exporters are scrambling to acquire compliance expertise. That, in turn, has spawned a compliance industry in which software plays an increasingly important role.

"(Compliance) is a very important area that historically had been underappreciated. Companies ... have not taken it seriously because they haven't been

caught. They have not been aware they were violating regulations. With the enforcement activity increasing, companies are trying to staff up, but it is difficult to do," said Koenig, who specializes in U.S. export control laws and regulations.

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*"Make sure the software will not be obsolete in a short time and that you understand what the software vendor can and cannot do."*

— *Lynda Westerfield,*  
*Alcon Laboratories Inc.*

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Unz & Co., known since 1879 for import and export documents, forms and directories, now offers export documentation software. Its typical buyers are small to midsize exporters with fewer than 500 employees.

"The increase in demand for our UnzExport Documentation Software 3.0 is attributed to the industry push for requiring accuracy, as well as the upcoming enforcement of AES filings," said Daniel Scott, Unz's chairman and chief executive, referring to the Automated Export System. AES will require that all

export documentation be filed electronically. It will also require exporters to provide more data. Scott said AES compliance is built into UNZ's software.

Software providers are marketing their products aggressively. One of the major sponsors of the American Association of Exporters and Importers' 86th Annual Conference and Expo, held in June, was Integration Point, a supplier of global trade software. "Driving Trade in the Global Marketplace: Compliance, Facilitation and Security" was the theme.

"We are frequent attendees at the AAIE conferences. When we go, there might be 40 vendors and five of them are software companies," said William P. Conroy, executive director of Tyler Search Consultants, a Ramsey, N.J., executive recruiter for companies in trade, transportation and logistics. "The competition is stiff. All have a little piece of the pie," he said.

### **Fueling the compliance demand**

The war on terrorism, with its heightened scrutiny of global supply chains, increasingly complex trade security regulations and more aggressive enforcement of those regulations, is fueling the demand for compliance software. Legislation introduced in Congress one month after ITT settled its case, for example, seeks to increase criminal penalties for violators of export control laws from a maximum of \$50,000 currently to the greater of \$5 million or 10

times the value of the exports involved, and civil penalties to a maximum of \$500,000 per violation.

The new Export Enforcement Act, which would renew the lapsed Export Administration Act of 1979, also would expand the list of criminal violations upon which a denial of export privileges may be based. It is said to be on a fast track for approval.

"It's expected to move quickly in September," said Robert J. Leo, a partner in the law firm Meeks & Sheppard, which focuses on U.S. and international law and regulations affecting exports and imports.

These proposed penalty increases follow those prescribed a year earlier by the Patriot Improvement and Reauthorization Act for violations of Department of Commerce Bureau of Industry and Security regulations. It raised the penalty for civil violations to \$50,000, from \$10,000 previously, and for criminal violations to a maximum of 20 years imprisonment from 10 years.

Estimates are that compliance automation is the fastest-growing segment of the overall global trade management, or GTM, market.

"We have seen a 30 percent to 40 percent growth in demand over the last three years (stemming from) the increase in global trade and fueled by the fact that most things are being outsourced today and by a much greater awareness in the industry of compliance requirements," said Kenneth Halle, chief operating officer of Kewill Trade and Logistics North America, in Nashua,

N.H., a division of Britain's Kewill Systems PLC.

Kewill is one of the major players in export compliance software. Others are Management Dynamics Inc., of East Rutherford, N.J.; OCR Services Inc., Rockville Md.; and TradeBeam Inc. of San Mateo, Calif.

#### A priority investment

Along with documentation technology, import and export compliance is the No. 1 area for global trade technology investment, according to trade management experts. A recent study by Boston's Aberdeen Group Inc. concurs. Published in June under the title "Global Trade Management Strategies: Surviving Growing Complexities in 2007," the study shows that "improving trade compliance and global supply-chain visibility" are the top priorities for improvement in global trade management this year.

Best-in-class and average companies are twice as likely than laggards to use an export or import compliance automation module as part of their GTM technology platform, the study said. Aberdeen polled more than 200 companies for the study.

Export compliance software performs a range of functions, including properly documenting exports; making license determinations and obtaining the licenses when required; properly classifying export products; accurately identifying end-use; screening customers, partners, vendors and suppliers to see if their names appear on the Bureau of Industry

and Security's Denied Persons List; and maintaining required records.

Raj K. Boveja, OCR's president and chief executive, said large corporations purchase compliance software systems outright and integrate it into their own enterprise resource planning systems, while smaller companies tend to opt for a hosting relationship with the software vendor. Boveja explains how his firm's software works for exporters.

"Once a company gets an order, our software kicks in and checks the order against the denied party list. Then we do the product classification to see what licensing is required, if any. If a license is required and if it is a military item, we submit the application to the Defense Department. Then we track those applications. It's a pretty complex system," he said. "Then we track those licenses. We do the agreement for the licenses, then the documentation for shipping."

The software checks about 60 different lists, he said, including Commerce's Denied Persons, Entity and Unverified lists, the Treasury Department's Designated Nationals List and the State Department's Debarred List and Nonproliferation Sanctions lists.

#### Purchasing the software

Prices for compliance software vary. "It's all over the map. The price depends on what you need," said Rick Miller, a licensed customs broker and director of trade compliance recruitment for Tyler Research. Screening, for example, can range from \$2,000 to tens of thousands of dollars per user, Miller said.

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