Trade Compliance in Transition: Regulatory Shifts, Export Controls, and Enforcement Trends

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Panelists:

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Trade Compliance in Transition: Regulatory Shifts, Export Controls, and Enforcement Trends: Avoiding the Audit

Cameron Roberts & Gabe Padilla

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Session Objectives

Understand FMC & BIS Enforcement
Gain insight into current Federal Maritime Commission enforcement trends and regulatory updates vital for OTIs and EEI filers.

Emphasize Documentation & Audit Readiness
Focus on thorough documentation, digital agreement management, and preparation for audits to avoid penalties.

Manage NRAs and NSAs
Ensure proper structuring and effective management of Negotiated Rate and Service Arrangements for compliance.

Build Internal Controls
Develop robust internal controls to demonstrate good faith compliance and mitigate enforcement risks proactively.

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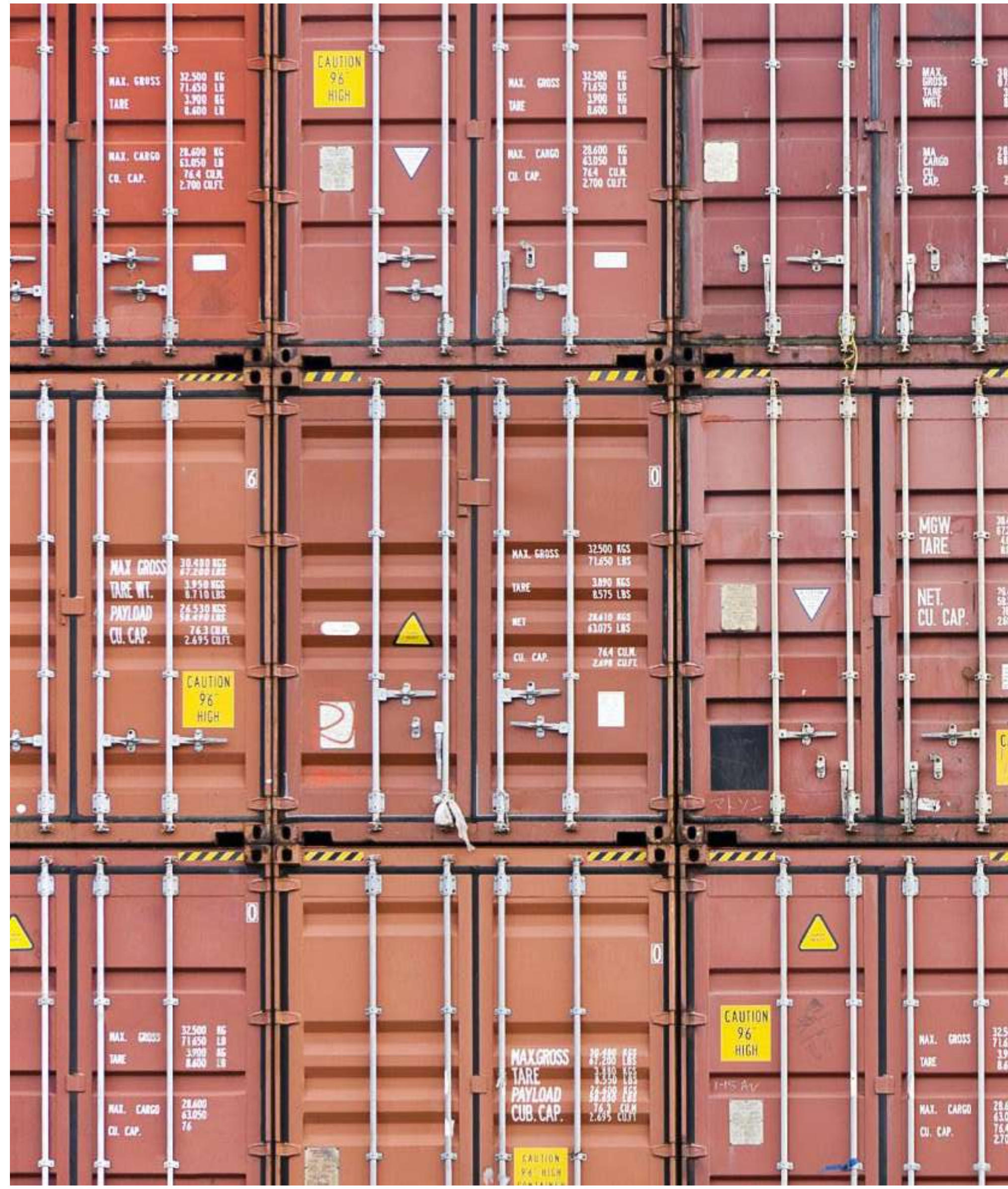
FMC OVERSIGHT OF OTIS

FMC Regulatory Role
FMC regulates OTIs including NVOCCs and freight forwarders to ensure fairness and transparency in maritime commerce.

Licensing and Tariff Compliance
OTIs must comply with licensing requirements and maintain accurate tariffs to meet FMC regulations.

Enforcement and Audits
Understanding enforcement risks helps OTIs prepare for audits and implement internal controls aligned with FMC expectations.



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FMC’s Role in a Changing World

Global Trade Response
FMC adapts to supply chain disruptions and U.S.-China trade tensions by strengthening oversight to protect U.S. exporters.

OSRA 2022 Impact
The Ocean Shipping Reform Act of 2022 expands FMC’s authority to address unfair carrier practices and enhance trade fairness.

Exporter Protection
FMC prioritizes fair access to shipping capacity for U.S. exporters, ensuring resilient maritime operations..

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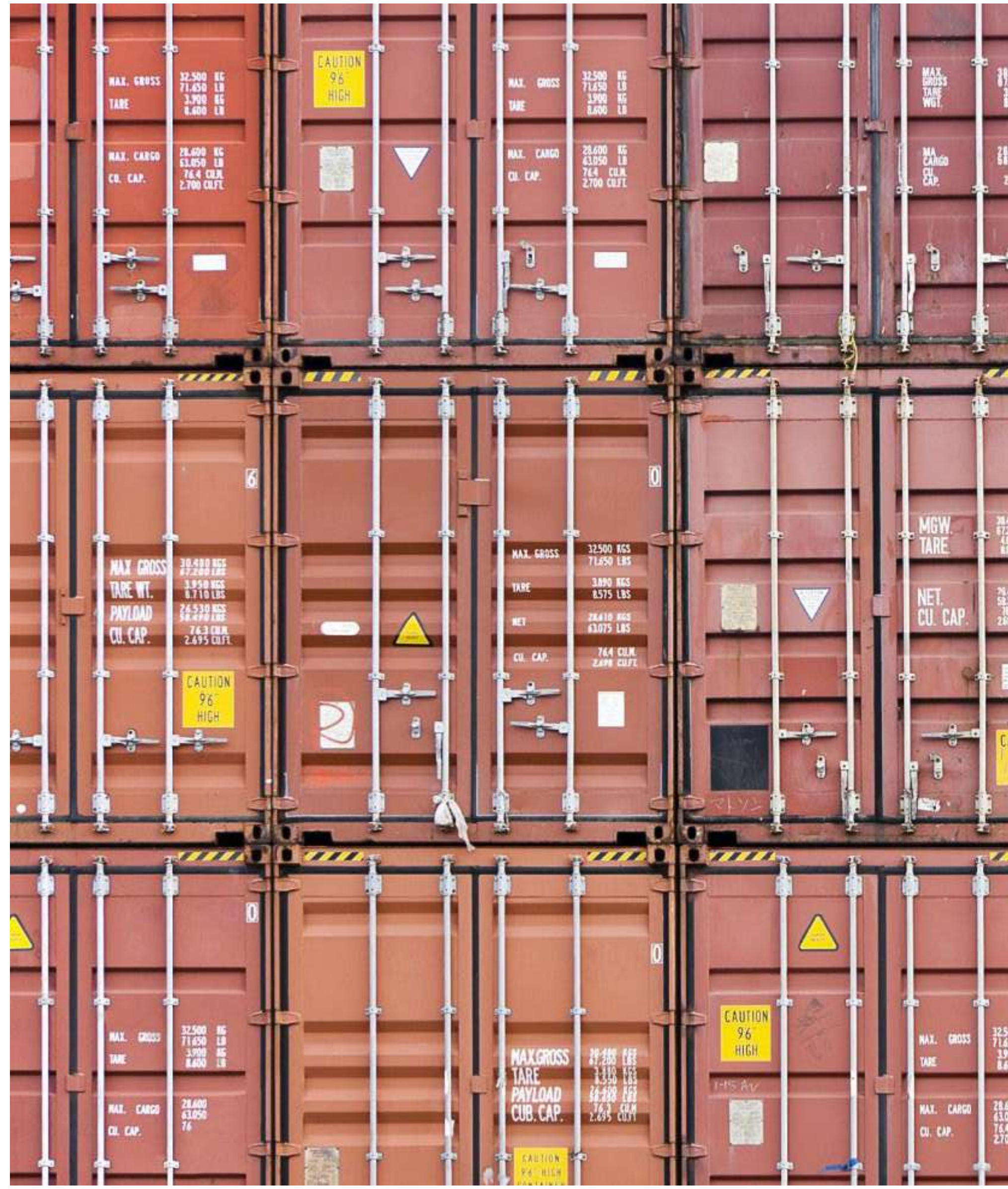
WHY THIS MATTERS

FMC's Impact
The FMC enforces fair maritime trade, collecting $2.9 million in penalties in FY2024 to address violations.

OSRA 2022
The Ocean Shipping Reform Act of 2022 expands FMC's authority to protect U.S. exporters and consumers.

Compliance Urgency
Heightened enforcement demands proactive compliance to avoid costly penalties in today's trade environment.



Enforcement Trends

Focus on Compliance
FMC enforcement actions increasingly target compliance among OTIs, emphasizing adherence to licensing and tariff regulations.

Common Violations
Frequent infractions include unlicensed operations, incorrect tariff filings, and misuse of NRAs and NSAs.

Increased Penalties
The FMC has raised penalties and settlements, demonstrating a more aggressive enforcement approach.

Risk Mitigation Strategies
Understanding enforcement trends helps OTIs adapt compliance strategies to avoid violations and regulatory risks.

BIS Enforcement Focus

Increased Enforcement
BIS announced a dramatic increase in enforcement actions and fines for violations of the Export Administration Regulations in 2025.

Technology Focus
BIS targets exports of sensitive technologies, including quantum computing, AI, hypersonics, semiconductors, and military applications.

Adversary Prevention
The primary goal of these enforcement actions is to prevent these critical technologies from reaching U.S. adversaries.

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Recent FMC Enforcement Actions

- A Florida-based NVOCC, Double Ace Cargo Inc., violated FMC regulations by transporting shipments for entities that were unlicensed NVOCCs without bonds or published tariffs. They paid $165,000 in penalties in two settlements. Double Ace must fund an independent monitor until May 2025, marking the first time the FMC has imposed such ongoing oversight in a compromise agreement.

- CMA-CGM, Vanguard Logistics, and Shipco Transport paid over $2.3 million in penalties through compromise agreements to the FMC following investigations into unlawful billing practices and dealings with unlicensed or improperly bonded OTIs. In addition, the companies agreed to reform business practices, provide restitution or audits, and cooperate with future enforcement efforts.

- EcoBamboo, an Oklahoma importer, filed an FMC complaint alleging Ship4wd mishandled a bamboo shipment from Indonesia by failing to properly fumigate, leading CBP to deny entry due to insect infestation. EcoBamboo seeks up to $230,865.51 in reparations for losses, while Ship4wd has stated it will respond to the complaint.

- In *Paycargo Fin. LP v. Aspen Am. Ins. Co.* (S.D. Fla. Feb. 26, 2024), PayCargo Finance sought recovery under a $150,000 NVOCC surety bond after Bay Maritimes, a bonded carrier, defaulted on repayment of freight advances. PayCargo had paid shipping lines on Bay Maritimes' behalf, but Aspen, the surety, denied coverage, arguing the advances weren't "transportation-related activities" covered by the bond. The court found Aspen liable for at least some of the claims—particularly payments tied directly to freight shipments—but left open factual questions about which transactions qualified, meaning the full scope of damages must be resolved later.

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Recent BIS Enforcement Actions

- Vadim Yermolenko was sentenced to 30 months in prison and ordered to forfeit over $75,000 for helping Russia illegally acquire U.S.-made dual-use electronics and military-grade ammunition through a global procurement and money-laundering network. Using shell companies and U.S. bank accounts, he and co-conspirators laundered more than $12 million to purchase sensitive technology and attempted to smuggle export-controlled ammunition to Russia, violating U.S. export control, fraud, and tax laws. BIS and U.S. authorities are pursuing not only companies, but individual actors.

- BIS imposed a record $95 million administrative penalty on Cadence Design Systems, alongside a $45 million DOJ forfeiture, for knowingly exporting Electronic Design Automation (EDA) technology to Chinese military-linked entities on the Entity List. Cadence admitted to 56 violations of U.S. export controls, using front companies to continue supplying sensitive semiconductor design tools that supported China’s supercomputing, nuclear weapons, and military modernization programs.

- Haas Automation, Inc. has agreed to pay approximately $2.5 million in civil penalties to the U.S. Departments of Commerce and Treasury for violating export controls and sanctions laws by illegally shipping CNC machine parts to Entity-Listed defense sector parties in Russia and China. The company admitted to 41 violations of the Export Administration Regulations and one violation involving inaccurate export documentation, but received a reduced penalty due to its cooperation and remedial actions.

Risk Mitigation Strategies

Building Compliance Culture
Developing a proactive compliance culture is essential to reducing enforcement risks and maintaining regulatory integrity.

Role of Qualifying Individual
The Qualifying Individual plays a critical role in upholding standards and ensuring ongoing compliance within the organization.

Internal Controls and Audits
Implementing internal controls and conducting regular audits supports prevention of violations and audit readiness.

Compliance Training and Responses
Continuous staff training and timely responses to inquiries help maintain a strong compliance framework.

FMC Enforcement Actions

The FMC requested a $48.4 million budget for FY25, a roughly $5 million increase, to fund these initiatives.

Technology updates for data submission and compliance began Q3 FY24 and are expected to last about 36 months.

The FMC intends to improve the supply chain and address potential anticompetitive practices by reporting on such activities by using non-adjudicatory investigations.

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NRA & NSA Compliance Essentials

Understanding NRAs and NSAs
NRAs and NSAs offer pricing flexibility but require precise structuring to meet FMC compliance standards.

Compliance Requirements
Proper documentation, digital signatures, and record retention are essential for regulatory adherence under FMC.

Avoiding Common Pitfalls
Incomplete documentation and failure to retain agreements are major compliance risks to avoid.

Best Practices Implementation
Implementing best practices in agreement management reduces enforcement risk and improves operational efficiency.

Compliance Checklist

Documentation and Digital Signatures
Ensure proper documentation protocols and use of digital signatures for regulatory compliance.

Record Retention and Training
Maintain records accurately and train staff regularly on compliance standards and expectations.

Role of Qualifying Individual
Qualifying Individual oversees compliance and manages agreements to uphold standards.

Auditing and Tariff Updates
Regularly audit operations and update tariffs to stay aligned with FMC requirements.

Demonstrating Good Faith Compliance

Indicators of Good Faith
Voluntary error disclosures and prompt corrective actions demonstrate commitment to compliance. Transparent communication with regulators builds trust.

Proactive Issue Resolution
Organizations that proactively address issues and cooperate during investigations are viewed favorably and may receive reduced penalties.

Building Compliance Culture
Fostering a culture of integrity and accountability helps organizations handle regulatory challenges effectively and sustainably.

Long-Term Benefits
Good faith compliance contributes to organizational sustainability and enhances positive reputation within the industry.

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Understanding Charge Complaints

Purpose of Charge Complaints
Charge complaints help shippers challenge unfair fees like detention and demurrage, ensuring fair billing.

FMC Resolution Process
The FMC process provides timely resolution and accountability for disputed shipping charges and fees.

Impact on OTIs
OTIs may be implicated in complaints, especially related to documentation and fee disputes, requiring preventive measures.

Managing Billing Practices
Understanding the complaint process helps OTIs improve billing management and avoid enforcement issues.

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Understanding Charge Complaints (continued)

D&D Complaints
FMC's May 2024 D&D rule allows shippers to file complaints for unfair billing within 30 days.

Resolution Process
OTIs must implement structured dispute processes to address D&D complaints efficiently.

Compliance Benefit
Proactive complaint handling reduces penalties and enhances shipper trust.

Key Takeaways

Regulatory Evolution
FMC and BIS regulations, driven by OSRA 2022 and EAR, demand proactive compliance from OTIs.

High-Risk Areas
D&D billing, tariffs, licensing, and export controls face increased scrutiny in 2025.

Enforcement Stakes
Non-compliance risks major monetary peanlties, impacting OTI operations.

Action Plan
OTIs should audit systems, train staff, and monitor FMC and BIS updates to mitigate risks.

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Key Takeaways

Regulatory Evolution
FMC and BIS regulations, driven by OSRA 2022 and EAR, demand proactive compliance from OTIs.

High-Risk Areas
D&D billing, tariffs, licensing, and export controls face increased scrutiny in 2025.

Enforcement Stakes
Non-compliance risks penalties up to $2 million, impacting OTI operations.

Action Plan
OTIs should audit systems, train staff, and monitor FMC and BIS updates to mitigate risks.

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