

## BPE Global Hot Topic – January 2020

### 2020 “New Year, New You”



It's the dawn of a new decade and resolutions are abuzz all around. Though just a few weeks in, it's time to embrace the concept of “New Year, New You.” On the trade front, 2019 was fast and unpredictable. As professionals in this industry, we've been reactive; spinning to stay on top of the ever-changing regulations, responding as needed to protect the bottom-line. 2020 is the year to pivot. In 2020, you will need to embrace a proactive approach to managing your business' trade compliance programs. Stay one step ahead of the industry to allow yourself the space to brainstorm with colleagues about a path forward out of today's trade wars. Our industry now has unprecedented visibility; leverage this to make real change within our industry. You'll be hearing a lot from BPE Global in the coming months surrounding collaborative actions you can take. This month, it's all about solidifying the foundation to launch your most successful year yet. We'll help you map out the key considerations to prioritize your company's annual trade compliance commitments. Implementing the changes and collaborating with colleagues to drive change will be up to you.

#### **“Hot Topics” to prioritize in 2020:**

- 1. Tariffs:** Retaliatory tariffs will continue in 2020 which will hamper importers of certain goods from certain countries. We've seen the section 301 tariffs imposed on Chinese goods – in this case, because of intellectual property rights violations. The U.S. and China are still struggling to negotiate a deal and it seems unclear whether any agreement will be achieved. Most of the goods being tariffed are food and consumer goods. There's no end in sight for negotiations so importers will feel the pain in 2020. The two most proactive things you can do is ensure correct classification and flag “at-risk” product by tariff number or country of origin within your systems.
- 2. Sanctions:** The current administration has been busy with applying restrictions to both high-profile companies such as ZTE and Huawei as well as country-level sanctions to Iran and Venezuela. Many U.S. companies have been holding their breath as to what general licenses and extensions will be granted. Companies and individuals are being added to the Bureau of Industry and Security's (BIS) Entity List at a rapid pace. If your supply chain involves one of these companies or countries, set a news alert to follow the sanction news so that should their status change, you can act swiftly.
- 3. Free Trade Turbulence:** The ongoing saga of certain free trade issues will continue into 2020 such as Brexit and USMCA (i.e. the renegotiated NAFTA). Depending on how Brexit rolls out, the U.K. may have many new free trade agreements to sort out with the EU and other countries. U.S. companies with distribution out of the U.K. have obviously been anticipating this massive supply chain nightmare but on pins and needles to figure out how to manage the change. Regarding USMCA, now that the House of Representatives has passed the agreement, details await on when Canada will ratify the agreement and when it will take effect. In addition to new labor standards, focus on intellectual property, rules of origin, agriculture, and digital trade, it will impact the flow of goods and services we know today. If you haven't done so, look at your supply chain and see if any of your suppliers or buyers are affected by this turbulence.
- 4. Committee on Foreign Investment in the U.S. (CFIUS):** CFIUS is a committee made up of sixteen inter-government agencies authorized to review certain transactions involving foreign investment in U.S. transactions, in order to determine the effect of such transactions on the national security of the U.S. The sixteen agencies include the International Trade Administration (ITA) and the BIS which then throws export controls into the CFIUS decision making process.

Many emerging technology companies that are only exporting prototypes and samples are treated just the same as well-established exporters. For now, if you have emerging technology of this sort, ensure the foundational elements of an export compliance program are in place per the [BIS' standards](#).

- 5. Emerging Technologies:** BIS has initiated an investigation on emerging technologies and how to control the export of certain U.S. intellectual property, hardware and software. The new controls will likely add licensing, end use controls and reporting requirements for items related to areas such as artificial intelligence, robotics, navigation and advanced surveillance technologies. Many foreign companies are investing and creating joint ventures in the U.S. to develop these new technologies and are now facing CFIUS investigations. The new controls might throw companies for a loop if they are not used to dealing with export controls.

#### **“Mandatory Topics” to flag for 2020:**

- 1. Encryption Reporting:** Reports are due by February 1st for the annual self-classification and semi-annual ENC encryption reports. Exporters who self-classify encryption products under 740.17(b)(1) and 740.17(e)(3) (mass market) will continue to be required to submit a self-classification report on an annual basis. Exporters do not need to report exports of 740.17(b)(1) items if they have received a CCATS for these items. Note that if no information has changed since the previous report, an e-mail must be sent stating that nothing has changed or a you can resend a copy of the previously submitted report. More information can be found [here](#).
- 2. 2020 HTS Changes:** The second item on the list is to review the changes in the 2020 Harmonized Tariff Schedule. The USITC has posted the changes on their [website](#). Also, note this might affect the HTS reported in lieu of a Schedule B number for your export declarations.
- 3. Export License Renewal:** If you utilize export licenses, you'll want to create a schedule for renewal. This is especially important for licenses from OFAC that are not driven by quantity or dollar amount. You'll want to start working at least 60 days in advance of the expiration. Hopefully you have a pulse on your Company's business and development strategies and are aware of upcoming licensing needs.
- 4. Auditing Schedule:** Your compliance audit schedule should be established now so that you can ensure your company's divisions or business units can plan for appropriately and won't be adversely impacted. Coordinate your internal audits with your Corporate auditing team to ensure your audits don't overlap. Also include in your schedule an audit of your service providers such as your customs brokers and the freight forwarders who are filing AES declarations on your behalf. A review of their performance and compliance with your standard operating procedures should be conducted annually.
- 5. Training Schedule:** On the same vein, you should be scheduling your trade compliance training sessions for the company. The entire company should be trained annually on general trade compliance with an emphasis on high risk areas for you company. Certain departments will require more in-depth training such as Shipping and Order Management. Whether these are in-person or online trainings, the earlier you plan and coordinate with other company initiatives, the more successful you will be.
- 6. Recordkeeping:** The next item on the checklist has to do with recordkeeping. Are there records that can move to your archives? Are there records that exceed all company recordkeeping guidelines that can be destroyed? Remember that some records need to be kept more than five

years. Records such as supporting documentation for certain Drawback claims might need to be retained past the five years, even up to 11 years.

- 7. Contract Renewals and Incoterms 2020:** Lastly, you'll want to review Powers of Attorneys and other third-party contracts for renewals. Ensure that if your company is renewing contracts with customers, vendors and suppliers that they are including the appropriate level of trade compliance verbiage and that incoterms are aligned and current. Contract manufacturer contracts should also have specific language regarding deemed exports and controlled technology transfers.

Mark the mandatory elements in your calendar and set as many automated alerts and processes as possible. Make your focus of the year the key areas outlined above. Collaborate with your colleagues on the changes you'd like to see in these processes. How can the tariffs be rolled out in a better way? How can emerging technologies exports be assessed more accurately?

As always, BPE Global is in your corner and is happy to assist in any capacity. You can follow us on [LinkedIn](#) where we publish topical opinions on the ever-changing rules and regulations governing the landscape of global trade.

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