

BPE Global Hot Topic – August 2023

China and Russia, Oh My



The myriad of new regulations regarding China and Russia require every exporter to take a step back and reassess their strategy of doing business in either country. It is no longer as simple as knowing that your items are EAR99. For example, the Chinese regulations require export licenses for EAR99 items for certain end uses and the Russian regulations impose license requirements for any machinery, electronics, and instruments.



Currently, there are no China sanctions, the China export regulations are way more complex than a sanction. Companies doing business in China have well established supply chains and networks of partners. Reassessing their China strategy requires a look at what is being shipped, who it is being shipped to and what it is going to be used for.

Companies doing business in China that developed their export compliance program based on the level of control of the item being shipped can no longer rely on the Export Control Classification Number (ECCN) of the item to determine if an export license is required. The recent regulations expand license requirements for products destined to the PRC classified under ECCNs that are controlled for anti-terrorism purposes only (including EAR99, 3A991, 4A994, and 5A992). Now export license requirements require a knowledge of the end user and end use of the item. No longer are companies able to manufacture their products outside of the U.S. with de minimis levels of U.S. content to avoid the U.S. export regulations. Now they must understand the Foreign Direct Product Rules and the restrictions on specific activities of U.S. persons involving items not subject to the EAR.



Belarus and Russia are subject to comprehensive multi-lateral sections. But that doesn't make it easier. The multi-lateral Russian sanctions have been a game changer for exporters. In addition to relying on the ECCN of an item, the Harmonized Tariff Schedule (HTS) number of an item is critical in determining if an export to Russia requires a license. This is a first! Exporters now need a Customs Broker to help them determine the correct HTS. In addition, there are restrictions on items only identified by a description (and no ECCN or HTS). Those descriptions apply to anything with that description, not just big items. In addition, things like cold-chain delivery systems require export licenses – impacting shipments of medicines and clinical trials.

There are very valid and compelling humanitarian and agricultural reasons to export to Russia. There are many medical needs that must be met for Russian civilians, without which their lives will be shorter. And Russian citizens need cell phones and other consumer devices to learn what's really happening with the Russian war on Ukraine.

The evaluation of whether companies can export to Russia doesn't end once a company determines that their goods do not require



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Additionally, the Entity List and the Unverified List are frequently being added to so having access to a robust restricted party screening solution is critical.

Any company exporting to China should be requiring an end use/end user declaration for every single export. And they should scrutinize those declarations because there are export licensing concerns like never before. And every single invoice should have a destination control statement.

an export license from the U.S. There just aren't direct supply chains into Russia so companies must also consider the European Union Russian sanctions.

There are countless human rights that BIS is giving serious consideration to for the many Russian export license requests that they are receiving. However, BIS is seeing products destined for civilians for legitimate and much needed reasons being diverted for the Russian war effort.

The bottom line for any company before doing any exports to China and Russia is knowing every single export regulation inside and out and reviewing their products, end users and the end use for every transaction they intend to engage in. And companies must thoroughly document their determination that an export is authorized. BPE Global are happy to share our end use/end user declaration with you and help you figure out how the Chinese and Russian regulations apply to your business.

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