

## **BPE Global Hot Topic – December 2023**

### **Don't Try This on Your Own**



Each year I say that I've never seen regulatory change at this fast a pace ever before. Well, it doesn't appear that things are going to slow down any time soon. Because of this, we need to step up our game and mentally prepare for the next change.

I've come to realize that getting a new Federal Register notice is like going through the five stages of grief. Grief and regulatory changes are inevitable in this life. But you can find healthier ways to take on regulatory change if you understand the different stages of grief.

1. Denial – You aren't operating in a vacuum – you know that National Security concerns are at a peak and strategies to protect it are being developed every day. But there is a natural inclination to fear change and fear the unknown. Couple that reality with the fact that several recent regulatory changes were implemented, and they weren't clear cut. Let's face it, it's easier to pretend that a new regulation wasn't just issued on a Friday evening with an effective date prior to its issuance date.
2. Anger – It is impossible not to be furious at the expectation that hundreds of pages of regulations containing new export control concepts and technical parameters are just dropped with no advance text or details on how to make it work, AT YEAR END. And it is infuriating that the public briefing hints at further clarification but doesn't clarify anything at all. The fact is that there's not enough time to read and understand it. Anger is appropriate in cases like this – isn't it?
3. Bargaining – Bargaining means having extensive dialog searching for options or alternatives. Can you tell me what TPP is? Can you calculate it? Do we come anywhere close to the TPP thresholds? Can you prove it? The reality is that the rule includes technical language that trade compliance professionals aren't trained to understand. How do you know if you are making the right choices on how you consider the applicability of the regulations?
4. Depression – Having to understand something that has never been done before can instantly lead to hopelessness and a loss of loving doing your job. And everyone having to deal with it will get irritable. Why didn't we retire last year?
5. Acceptance – And the final stage is realizing that you've done this before. You've kept your company out of trouble. You have worked miracles before. You've built trust and you've gained allies in your years of practice. They can help you figure this out and help you put a solution in place.

Now shake off that grief – and get to work. Start with a communication plan. You absolutely cannot do this on your own. You are the global trade compliance team – you do not “own” the technology, the financial impact, or the customer impact. You need to join arms with the people that do and build your team. Start by telling them that you are still processing what the regulation is and what changes it will bring but you are bringing them in early to leverage their skills and abilities.



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Your team should include executive leadership, Engineering, Sales, Order Management, and Operations at the very least. Bring them together early and update them frequently. And you are going to task this team with helping you assess and implement this new regulation by requesting:

- Leadership to support the time, money, and technology to implement the new regulation.
- Engineering representatives with technical skills to understand the impact of the new regulations to assess the impact.
- Sales to assess the impact of the new regulations on this quarter and future business.
- Order Management how to identify impacted product, software, and technology.
- Operations how they will hold items that might require authorization prior to export.

You'll have to create customer, distributor, and reseller communications in addition to providing your team with frequent regulatory briefings. You'll need to reinforce the fact that interpreting the regulations is an evolution – especially when there is no advanced notice.

You will need contingency plans that address things like: What if you need to hold shipments until you know if you are subject or not? How will you identify what gets held? How will you efficiently release what has been held? What happens if something gets through?

Once the dust settles, you must do a post-mortem. We had 23 days for this last major regulatory change, we might not get any advanced notice the next time. How can you improve on your plan so that you can be more effective next time? And don't forget all the changes that you will have to implement to your classification questionnaire and your end use/user declarations.

We cannot predict what the next regulation will impact, but we be better prepared. Start assembling your team to interpret and implement a response to the next Federal Register notice.

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