

## BPE Global Hot Topic – January 2021

### Focus and Flexibility



“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.”—These are the exact words I wrote in January of 2020. I have never been one to be ahead of a trend, but looking back on my word choice, “pivot,” I believe there is a first time for everything. Unfortunately, the call to action—proactively tackling your trade compliance program—was untenable due to the devastating blow of this global pandemic. Fortunately, I have had the privilege of being in close proximity to our industry peers who have “pivoted” in ways we previously would have found untenable. The pairing of survival-mode-focus and unprecedented flexibility have exemplified foundational attributes to success amongst the chaos. It is time to level-up our sense and sensibility to focus and flexibility. Focus and flexibility will not only help us through this pandemic, but most importantly, keep us nimble for the future of trade compliance and its inevitable growth that will come from the Biden-Harris Administration.

Focus. Focus on mandatory topics in your purview. Mark them in your calendar and set as many automated alerts and processes as possible. Many trade compliance responsibilities overlap with other departments, so focus on collaboration with your colleagues as you work to tackle the following trade compliance responsibilities:

- **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 you can resend a copy of the previously submitted report. More information can be found [here](#).
- **2021 HTS Changes:** The second item on the list is to review the changes in the 2021 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.
- **Export License Renewal:** If you utilize export licenses, you will 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 will 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.
- **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 will not be adversely impacted. Coordinate your internal audits with your Corporate auditing team to ensure your audits do not 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.
- **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 your 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.

- **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 for 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.

Flexibility. The landscape of the past few years has mandated that global companies become flexible. Rapidly changing tariff rates, export controls, security program requirements, free trade agreement eligibility...the aftershocks of these types of changes have been felt across supply chains globally. Collaboration with our peers, both in our companies and across our industry helped us learn of alternative solutions to challenges we never expected our supply chains would face. We encourage a continuation of communication with our peers and thinking about the following hot topics which will continue to warrant flexibility:

- **Tariffs:** Though the Biden-Harris Administration has not shown indication of removing the Section 232 or Section 301 tariffs, they are widely expected to enforce a coalition-building approach in dealing with China. In preparation of any changes surrounding the tariffs, continue to ensure the correct classification and country of origin of your company's products.
- **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.
- **Emerging Technologies:** 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.

Focusing on our mandatory tasks while monitoring the evolving trade compliance topics to flex for the inevitable future trade compliance changes will be paramount to ensuring our ongoing success in the trade compliance industry. 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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