

New Year's Resolutions

We all have our personal New Year's resolutions, but do you have your trade compliance resolutions defined? These shouldn't be added to your work pile but rather just regular checks on your existing operations. Then as your company changes direction, you'll know that current operations are compliant especially in light of an election year. Here are some take aways for planning for the next year:

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Certification to Prevent Diversion to Russia of 'Highest Priority' Items:

More than ever, your company should be screening for restricted parties but also investigating companies that could be diverting your product to sanctioned or embargoed countries.

BIS published a [Best Practice](#) guide for prioritized items that fall under nine HTS numbers that are most likely to be diverted to Russia. This includes a recommendation on a certificate for your customers/distributors to complete and confirm that they will not be shipping to or have knowledge of your company's items shipping to Russia. The nine items on the list are mostly integrated circuits, radar and capacitors. But there are [forty-five HTS numbers](#) that are of heightened risk as well. So, if you are still supplying high technology items to Russia customers, it behooves you to make sure this process is in place.

Continued Sanctions against China:

Section 301 Duties: In December, the Office of the United States Trade Representative announced an extension of 352 product exclusions from [Section 301 Duties until May 31st 2024](#). There has been no update from the current U.S. government administration on the status of the Section 301 tariffs going forward. Companies, especially small companies, continue to pivot their operations based on the excessive duties for Chinese manufactured products. It does not appear that there will be any change to these tariff-based actions before the next election in 2024.

Advanced Computing and Semiconductor Manufacturing Equipment (SME) Regulations:

The 'super computer' regulations set out in EAR part 744.23 have morphed into what we are referring to as the 'z' classification. A '.z' subcategory has been added to ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, and 5D992, to capture chips normally controlled by these ECCNs, but that "meet or exceed" the performance parameters of 3A090 and 4A090. .z ECCNs require licensing to all destinations in Country Groups D:1, D:4, and D:5 (excluding destinations also specified in Country Groups A:5 or A:6 — i.e., Cyprus and Israel). As a result, licensing will be required to export, re-export, or transfer (in country) these items to or within 45 destinations (including China).

This puts a huge burden on exporters from an operational aspect. '.z' classified items must be declared regardless of value and there isn't a automated method of entering this classification so AES filers must enter the '.z' ECCN in the commodity description section of the EEI filing. The commercial invoice must also reflect the correct classification as well, which most likely means changes to ERP systems.

There are also new 3B001 and 3B002 criteria for SME manufacturers including certain equipment designed for silicon (Si), carbon doped silicon, silicon germanium (SiGe), or carbon doped SiGe epitaxial growth; certain equipment designed for coating, depositing, baking or developing photoresist formulated for “EUV” lithography; semiconductor wafer fabrication cleaning and removal equipment; and inspection equipment designed for “EUV” mask blanks or “EUV” patterned masks, among others.

While there are two general licenses valid until the end of 2025, they only benefit companies that need to transfer out of China. There is a new license exception, Notification Advanced Computing, ‘NAC’ but it’s limited and requires a 25-day notice to BIS prior to export. So, it’s unlikely that this will be practical.

Training:

Because of all the shifting and new regulations, importers/exporters should have a companywide trade compliance training program in place that provides an overview of the high-risk areas the company encounters based on their products, technologies and where and who they do business around the world.

Trade compliance training seminars and conferences such as the BIS Update and U.S. Customs Symposiums and webinars are great ways to stay updated and are now offered virtually. But companies should also invest in training that is specific to their industry, products, and markets. Training is a company’s greatest ally in mitigating trade compliance risks. And not to mention that U.S. Customs, the U.S. Commerce Department, and the U.S. State Department expect that every company has a trade compliance training program in place.

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(b)(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](#).

Semi-annual reporting is required for exports to all destinations other than Canada, and for reexports from Canada for items described under paragraphs 740.17(b)(2) and 740.17(b)(3)(iii). The semi-annual ENC license exception report is also due on February 1st for activity during July 1st through December 31st of 2023. Details are available [here](#) on the Bureau of Industry and Security website.

Auditing Schedule:

Your compliance audit schedule should be established now so that you can ensure your company’s divisions or business units can plan 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.

The year 2024 will bring many of the same issues for shippers as 2023 and shippers should expect more twists and turns in the trade compliance arena. Even if supply chain woes do ease, don’t let the new CBP and BIS regulations delay your freight or cost more than you anticipated once it arrives at the border.

Hopefully we've shed some light on this topic. Let BPE Global know if we can help you with any of your trade compliance needs. BPE Global is a global trade consulting and training firm. Julie Gibbs is a Director of BPE Global. You can reach Julie by email at julie@bpeglobal.com or by phone at 1-415-595-8543.