

BPE Global Hot Topic – August 2020

The Continual Pivot



Having spent a good part of my career in Silicon Valley working at start-ups the word “pivot” was long part of our vernacular before this pandemic hit. Pivoting simply was changing direction, and it was an art to do it nimbly and successfully. Well, for trade compliance practitioners this has been the year of the pivot for so many reasons. The challenge is that we start taking a direction on a new regulatory issue and boom, suddenly there is another one to address. The regulatory changes are coming in fast and furious and the pivot is turning more into a pirouette – we are all spinning!

This month instead of one topic, I have three hot topics that you need to know about which I have distilled down to the highlights and encourage you to contact us for a deeper dive if the topic is impactful to you and your company.

1) **Huawei** – Can it have gotten any more complicated or confusing?

Many of you have taken the conservative approach already and have stopped selling to any Huawei entity, whether on the entity list or not, back when some locations were initially added to the Entity List in 2019 as a risk-based strategy. Now there are 38 new Huawei affiliates added to the Entity List and the most important thing to pay attention to is that not all of them have “Huawei” in their name. For example, “Toga Networks”. See the Entity List found in [Supplement No. 4 to Part 744 of the Export Administration Regulations](#). Hopefully, you have already checked your GTM system to see if the 38 new entries caused a “hit”.

Of keen interest is the Foreign-produced Direct Product Rule (FDPR) revisions related to Huawei transactions. The intent of these revisions were to improve U.S. national security by limiting access to, and use of, U.S. technology to design and produce items outside the U.S. by entities that pose a significant risk of involvement in activities contrary to the national security (NS) or foreign policy interests of the U.S. Previously, Huawei’s Entity List designation did not prevent it from acquiring semiconductors produced in foundries outside the U.S that were the direct products of U.S.-origin equipment and technology that were not NS-controlled. BIS’s action is intended to address that gap.

The hope is FAQ’s will be published soon to address specific scenarios. In the meantime there are 129 pages of detail to read through [here](#) on the addition of Huawei Non-U.S. Affiliates to the Entity List, the Removal of Temporary General License, and Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule). And another eleven pages [here](#) on Clarification of Entity List Requirements for Listed Entities When Acting as a Party to the Transaction under the Export Administration Regulations.



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- 2) **Hong Kong Marking** – As if things were not already confusing enough, goods produced in Hong Kong will now be required to be marked with “China” as their country of origin effective September 25, 2020. See 19 U.S.C.A. § 1304 and 19 C.F.R. Part 134. See the Federal Register notice [here](#). My initial reaction on that one was “Who makes product in Hong Kong anymore?”. But I have since found out that some companies still do make Hong Kong origin product.

“Marking” for US import purposes means physically labeling the goods or their containers. See the e-CFR detail [here](#). Fortunately CBP has made available some [FAQ](#) to answer any questions you might have. A key thing to know is that the Federal Register Notice affects marking requirements only, not country of origin. Also, at this time, the additional duties imposed by the Section 301 remedy only apply to articles that are products of the People’s Republic of China (ISO Country Code CN). Imported goods that are legitimately the product of Hong Kong (HK) or Macau (MO) are not subject to the additional Section 301 duties. Now wrap your head around all that!

- 3) **New FTA Certificate of Origin** – On a helpful note, CBP published [Certification of Origin Template](#) on August 7th. On the top right of the document is a drop-down and surprisingly you can choose one of ten different certificate of origin free trade agreement templates including USMCA, and the applicable criterion populates. Nifty!

On a final note, as a resident of Santa Cruz and Sonoma County, I want to acknowledge the impact of the fires throughout California. There have been so many tragedies this past week, but also stories that warm my heart and give me hope. Stay safe everyone!