

Top Trade Compliance Initiatives for 2018

This year brings many uncertainties about what your top compliance initiatives should be because of the recent election and potentially massive changes to the regulations. We hope the following list will help you get through some of the uncertainty and keep you on track this year.

The following are recent developments to stay on top of:

Sanctions: Yes, sanctions have been a hot topic lately especially regarding Russia, Venezuela, Cuba, and Sudan. But the most intriguing sanctions have to do with North Korea and forced labor. In August, Congress passed the Countering America's Adversaries Through Sanctions Act (CAATSA) which puts the burden of proof on US importers that their goods were not made wholly or in part with North Korean labor. This is a big deal since China has notoriously used North Korean labor in its factories. This Act puts CBP (not OFAC) in charge of investigating potential violations. Make sure you review CBP's [Informed Compliance publication](#) which provides a checklist for reasonable care in regard to forced labor. There are actually many more countries other than North Korea that use child/forced labor that can be found [here](#).



Trade Agreements: You should anticipate more discussions around the US-KOREA and NAFTA free trade agreements this year. It appears that President Trump will not necessarily withdraw the US from NAFTA and the negotiations that began last November will likely continue through March. US-KOREA free trade agreement talks just began this month and should be resolved in a more expeditious manner due to the limited revisions being discussed. Both agreements will no doubt have significant revisions for the automotive sector. Oh, and let's not forget GSP—that's a thing of the past since it expired on December 31st. Note the 2018 HTS changes have removed the Special Program Indicators (A, A+, A*) on applicable HTS numbers. CBP is encouraging importers to continue to flag GSP-eligible importations with the SPI "A," even as they pay normal trade relations (column 1) duty rates on otherwise GSP-eligible importations. Importers may not file SPI "A" without paying duties. See more [here](#) for CBP's guidance on GSP.

ADD/CVD Investigations and Increased Enforcement: The Government Accountability Office estimated that \$2.3 billion in ADD/CVD had been uncollected as of 2015. We've seen increased investigations and prior disclosures over the past years as a result. Interesting to note, that back in November US Secretary of Commerce, Wilber Ross, announced a self-initiated ADD/CVD investigation of imports of common alloy aluminum sheet. This is uncommon since ADD/CVD investigations are usually initiated by domestic industry. Other recent investigations involve biodiesel, polytetrafluoroethylene (PTFE) resin, and fine denier polyester resin. CBP has a website where you can view Recent Messages regarding ADD/CVD cases [here](#).

Less exciting but important! The following are not as exciting but mandatory if they affect your and/or your company:

Customs Broker Triennial Status Report and Fee: U.S. Customs and Border Protection has announced that the submission period for the 2018 customs broker triennial status report and fee will open Dec. 15 and close Feb. 28, 2018. Failure to file will result in the revocation of the broker's license by operation of law, without prejudice. You DON'T want to take the exam again, so make sure you file your report and pay the fee in a timely manner. [Find out more here](#).

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 a 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



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also due on February 1st for activity during July 1st through December 31st of 2017. Details are available [here](#) on the Bureau of Industry and Security website.

And remember, you no longer have to worry about changes to your encryption registration since the registration requirement has been removed from the regulations.

2018 HTS Changes: The second item on the list is to review the changes in the 2018 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. Census has posted an Add/Delete list of Schedule B numbers on their website so be sure to check this list especially if your HTS numbers were affected in the new year.

EU Dual Use List Update: If your company exports from the EU, you'll want to review the changes to the EU Dual Use List. An updated list of acronyms and abbreviations; new definitions for "biological agents" (Category 1), "Monolithic Microwave Integrate Circuit" (MMIC) (Categories 3 and 5) and "authentication" (Category 5 Part 2). The definition of "adapted for use in war" (Category 1) was removed; the restructuring of Category 5 Part 2 into a more positive control list of dual-use information security items continued. Note 4 (decontrol note to Category 5, Part 2) was removed, and is now incorporated in the 5A002.a. control entry; and the addition of new (sub-entry) controls in Category 3 for integrated circuits with analogue-to-digital converters (3A001.a.14.) and for MMIC transmit/receive modules (3A001.b.12.), and in Category 6 for certain lasers (6A005). The changes were effective December 16, 2017 and can be found [here](#).

Export License Renewal: If you utilize export licenses, you'll 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'll 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. If not, it's a great time to meet with the Sales and Business Development Teams to make them aware of licensing issues such as your current licensable products and new sanctions, such as against the government (and all government agencies) of Venezuela.

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 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.

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 you 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.

You'll also want to consider conferences and seminars for your professional development. Make sure there is a budget in place and that you organize your initiatives around these dates so you can actually attend the training sessions and not be holed up in your hotel room on conference calls and on email!

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 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.

Contract Renewals: Lastly, you'll want to review Powers of Attorneys and other third party contracts for renewals. Ensure that if your company is renewing contracts with customers, vendors and suppliers that they are including the appropriate level of trade compliance verbiage. Contract manufacturer contracts should also have specific language regarding deemed exports and controlled technology transfers.



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Let BPE Global know if we can help you with any of these 2018 initiatives. 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.