

2016 - The Year in Review

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January, 2017

The new-year offers us an opportunity to take stock, to reflect on the past year and plan for what is to come. 2016 was a momentous year for trade. While presidential politics garnered the spotlight and often cast trade in the role of the boogey monster, Congress and trade regulators were busy behind the scenes implementing changes. Companies are right to consider what would happen to their supply chains should some of the more alarming campaign rhetoric become reality. They are better served, however, focusing their efforts on understanding what Congress and the regulators have already done in 2016.

ACE nearing completion

CBP's Automated Commercial Environment or ACE system is nearing completion. Most partner government agencies have already come onboard or are nearing final implementation. We can expect refinements to the system over the coming months but the core functionality is already there. For customs brokers it has been a particularly bumpy ride but importers seemed to barely notice the transition. Importers who have not already done so should apply for an ACE portal account and take advantage of the monitoring and reporting capabilities within the system.

AES now in ACE

Unless you were filing your own Electronic Export Information files you probably did not notice that the Automated Commercial Environment was absorbed into ACE and is now managed by Customs and Border Protection. The EEI file and the data reporting is still within the oversight of the Foreign Trade Division of the Census Bureau. CBP, however, is now providing an additional layer of scrutiny particularly relative to data accuracy. Like their importing colleagues, exporters should also obtain an ACE portal account and available themselves of the free data reports available in the system.

The CEEs were implemented.

CBP put the implementation of its Centers of Excellence and Expertise on fast forward last spring. The CEEs organize CBP by commodity specialty and leverage the capacity of ACE allowing for centralized post-entry processing and monitoring of imported goods. During the transition importers have experienced an increase in formal and informal inquiries as the teams within the CEEs become more familiar with their client base. The CEEs promise regulatory consistency for importers but also offer CBP a better view into non-compliant import practices. Importers, it is time to step up your game to ensure you can sustain the additional scrutiny!

Congress reasserts CBP's Enforcement Role

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), passed in the spring of 2016, underlined CBP's focus on the priority trade issues of:

- Antidumping and Countervailing Duty (AD/CVD)
- Import Safety
- Intellectual Property Rights
- Revenue
- Textiles/Wearing Apparel
- Trade Agreements

Under the Act, CBP has altered its audit strategy. It has begun targeting specific importers with letters informing them of their responsibilities and reminding them of specific informed compliance documents highlighting CBP regulations with which they must comply. A company that receives such a letter should be concerned that CBP has already identified specific inconsistencies with its import program and should anticipate that CBP will be initiating a compliance audit of the company.

Congress gave new authority to CBP to investigate evasion of antidumping and countervailing duties.

The TFTA also gave CBP additional authority to investigate claims of importers evading payment of antidumping and countervailing duties. This resulted in a new 19 CFR §165 set of regulations for investigating AD/CVD evasion. The act also authorized a Trade Remedy Law Enforcement Directorate within CBP to carry on the investigations and, when indicated, undertake enforcement actions.

With this new approach, importers are advised to scrutinize their supply chains for the possibility they might include goods within scope of AD or CVD orders.

Export control reform. DCS updated in November.

Exporters have become used to the ongoing export control reform activities that have dramatically changed the EAR and ITAR regulations over the past years. In November of this year the Destination Control Statement (DCS) was changed to so that the EAR and ITAR statements would be identical. In the past, exporters routinely included this statement within their invoices, even when it was not required. The version of the statement is more assertive. Exporters should ensure their documentation is updated to include the revised language.

And more...

Congress has taken other trade actions that are not directly related to trade compliance but could affect a company's international supply chain. Chief among these actions was legislation for monitoring countries for manipulating currencies. Already China, Taiwan, Japan, South Korea and Germany have met two of the three criteria that would trigger the U.S. to name them as currency manipulators subject to retaliatory trade action.

What should a company do?

Ranging from new systems to enhanced regulations, the regulators have expanded tools for enforcing trade laws. Like it or not, companies will be under increased regulatory scrutiny in 2017. Importers and exporters alike need to be prepared to sustain this level of oversight. They should consider the following:

1. Undertake a compliance evaluation
2. Raise internal trade compliance awareness through corporate-wide training
3. Provide updated training to trade compliance staff
4. Investigate AD/CVD exposure in the supply chain
5. Incorporate trade compliance into corporate risk management plans.