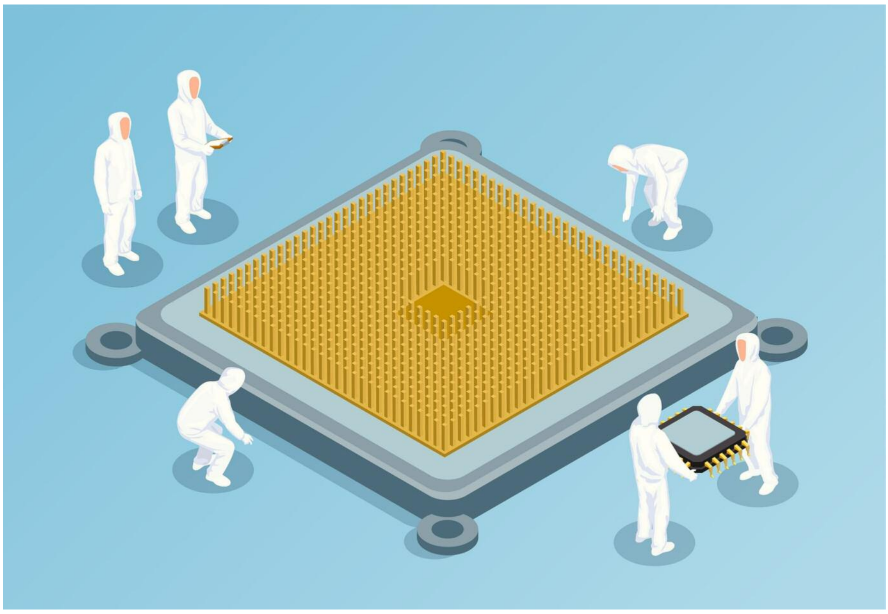

KPMG **SMART PRACTICE**

The Semiconductor Rule: What should you do next?

The new regulation that the US Bureau of Industry and Security ("BIS") issued in October that heavily restricts exports of integrated circuits, super computers and certain semiconductor manufacturing items and activities, as well as US person support activities, is having a resounding impact across numerous industries. The near simultaneous issuance and implementation of the regulations meant that export compliance professionals had little time to prepare – but a methodical approach to determining impact will ease long-term compliance.

Applicability of the rule

The first step is to assess the rule in light of the company's specific industry and product profile. Are there particular aspects of the rule that are applicable, while others will not impact operations? If there are questions around whether certain products or technologies are captured, it will be necessary to engage with the appropriate technical teams. This means clarifying what are considered "end-uses" and who are considered "end-users" in line with the new regulations. Once the assessment of the rule is complete, Export Compliance should document the impact to the company.

Communicate the impacts

Once the export compliance team has documented the impact of the rule,

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senior stakeholders potentially including general counsel and the Chief Operating Officer ("COO"), should be alerted. Together with Export Compliance, a communication plan can be developed to identify groups that may need to be informed of the financial implications. Depending on the company, disclosures may be required to the Board or incorporated into financial reporting.

While developing a communication strategy, the Export Compliance team should be leveraging all available resources to bring its activities into compliance with these regulations. This may include making immediate system level changes to place holds on products that are either controlled or that require further analysis. Additionally, the Export Compliance teams will likely need to review their data-collection processes related to end-uses and end-users to determine if the appropriate information is captured and stored. It is important that the teams remember that making the information accessible and useable is foundational to maintaining compliance. Without strong data, it will become infinitely more difficult to maintain compliance.

As part of these efforts, Export Compliance teams should actively participate in industry groups. Many of these groups provide useful, practical guidance while also offering an opportunity to connect with peer companies. The informal conversations provide a window into how other companies are reacting to these rules. Similarly, the Export Compliance team should use government resources to help guide compliance decisions. Of particular importance will be any Frequently Asked Questions ("FAQs") that BIS releases as these provide insight both into specific questions as well as BIS' approach to the regulations.

US person support

Finally, certain companies may be impacted by the US person "support" provisions which will require a deeper understanding and monitoring of US person activities. These companies will need to implement protocols to identify and review US person involvement, as well as retaining documentation supporting why they are not controlled. In most instances, this will require developing a specific review and monitoring process that could potentially involve senior stakeholders.

There will undoubtedly be challenges and lessons to learn as exporters adapt to these new regulations. However, with careful review and the right stakeholder engagement, appropriate controls can be implemented that will limit risk.■

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