This year I will….

Have you made your new year's resolutions?

The start of a new calendar year normally comes with a fair bit or personal reflection. It is perhaps less common for it to come with some business reflection, particularly in the space for customs and trade. Many other taxes have pre-defined "busy periods", following tax reporting requirements, financial years, deadline extensions and so on and so forth.

The world of international trade knows few of such externally imposed time periods. It is transactional, hence often presumes or requires a "now or never" approach. Nevertheless, if there is any particular time that warrants extra attention, it probably is the start of the new year. This traditionally is when new regulations take effect and new audit targets are set.

Hence it is also a good time to make some related new year resolutions. Here are a few to consider:

Carbon Border Adjustment Mechanism (CBAM) reporting

The first report on carbon content of affected materials imported into the EU under CBAM is due this week. This covers imports in the period 1 September - 31 December 2023. Are you affected? Do you even know? Does your affiliate or customer importing into the EU know? Despite the many consultation, information and outreach events, we still see many exporters around Asia that do not have a good handle on this.

Broadly speaking they fall into three camps: "no idea", "don't care", and "trying hard". Few if any tell us they feel that they are fully in control. Perhaps it has not helped many companies exporting affected goods to the EU that they have no legal obligations and that their customers in the EU can - for the first few reports - use default values, hence have not been asking. But that won't last. Neither is it a sustainable long term option not to care.

Although at the moment the scope of CBAM is limited to a handful of industries and products, and to the EU. However, both the scope of captured products in the EU can be expected to broaden in the foreseeable future, and other countries can be expected to start considering their own measures. Such measures may include levying their own version of CBAM, reducing the number of potential customers that do not require the related carbon information for their purchases. It may also include levying other carbon taxes domestically, such that exported products are no longer subject to additional CBAM-like charges, in the process collecting additional revenues.

Whichever way you look at it, a good new year's resolution would be to start caring about carbon content in exported products, establishing ways to measure them accurately, and engage with existing and would-be customers around the reporting data and process they would value.

Tariff changes

A new calendar year often also comes with changes to tariffs. In this edition of Trade Intelligence we see just some of those changes in China, Malaysia, the Philippines and Vietnam.

Tariff changes can be one of two types. First, the tariff itself may change, introducing new codes, removing existing codes, and/or changing code descriptions. Sometimes these are purely domestic changes, sometimes they are related to the implementation of international commitments, such as updating the applicable underlying HS version, or changing the HS version applicable to FTAs. Either way, they may have an impact on the tariff classification declared for exported and imported products. Inadvertently, wrong tariff code declarations may ensue, leading to hidden risks of non-compliance and its related costs.

Second, tariff rates may change. Temporary duty rate reductions may lapse or change. New temporary duty reductions (such as the interim duty rates in China, or the VAT reduction in Vietnam) may start. Also, the next phase of FTA rate reductions often commences on 1 January. All of such changes impact not just the duty cost profile of an importer, they also likely require updates to reporting, payment processes and similar compliance obligations.

Hence another excellent new year's resolution would be to revisit tariff compliance and opportunities, such as:

- A review of the accuracy of declared tariff codes;
- An evaluation of the applicability of new tariff rates across all markets;
- A reassessment of the cost-benefit analysis of FTA opportunities;
- Timely updates to relevant IT systems.

Transfer Pricing Adjustments

Many companies have a process for regularly reviewing and adjusting their intercompany product prices in order to meet predefined net profit targets. Although this is increasingly done in real time (creating its own customs valuation challenges), it remains very common for such adjustments to be made once a year. Typically this would be soon after the end of a company's financial year. Very often, that means retrospective price changes take place in January.

In most territories, including in Asia, there is a legal requirement to report such changes to the customs authorities and make appropriate adjustments to customs declarations. Practically, such authorities are only interested if prices have gone up and they are entitled to additional import taxes. The available processes and procedures for reporting retrospective transfer pricing adjustments vary by territory and can be very much impacted by the revenue at stake. An overview of the latest landscape around Asia in this respect will soon be available on our website.

Not reporting the adjustments is non-compliant and could easily lead to back-duties and penalties during a subsequent audit. Reporting the adjustments may encourage the authorities to come and have a closer look, for example through an audit. That may sound like being stuck between a rock and a hard place.

Therefore, time for another new year's resolution:

- Proactively create customs value documentation that provides robust support for declared values, even should they subsequently change.
- Develop and implement internal processes and procedures that ensure any transfer pricing adjustments are captured and notified accordingly to the customs authorities.

Customs audit preparedness

New year new audits. The territory reports for Japan and Vietnam in this edition of Trade Intelligence cover specifics around customs audit results and targets for 2024. You can bet your bottom dollar that most if not all customs authorities have looked at their revenue targets for 2024 and the outcome of their audits in 2022 and 2023, defining their audit plan of action for 2024 in the process.

The risk assessment approach taken by the customs authorities is improving in leaps and bounds. Additionally, many of them have gotten their heads around better use of technology to spot inconsistencies and inaccuracies in declarations. Furthermore, they are using technology to review a larger portion of declarations in detail. Consequently, not only are they more likely to pick up on declarations errors, they are also less likely to waste time on "false positives" (things that look on face value like declaration errors but turn out not to be after more thorough investigation).

In response, a clever new year's resolution would be to enhance your customs audit preparedness. There are many ways of doing that, some of the more obvious ones being:

- Do your self-assessments before Customs come knocking;
- Match Customs' use of technology by implementing your own.

We expect our Trade Intelligence readers to already have made their customs and trade new year's resolutions, and still be abiding by them three weeks into the new year. If you have not, hopefully the above will help you get on the way.