

## **HAFFA Best Practice 015**

### **Strategic Commodities**

Issued: 20 December 2016

#### **1. Background**

- 1.1 It has come to the attention of the Association that a number of Member companies have been prosecuted and fined for shipping strategic commodities without valid licences.
- 1.2 Often, the Members concerned were unaware that the goods (*with generic goods description such as integrated circuits, router*) they were instructed to handle were or consisted of strategic commodities, and only became aware of that fact when the Customs and Exercise Department investigated the cases and made the prosecution after the shipments were flown weeks or years later.
- 1.3 In the hope of assisting Members in protecting themselves from unintentional committal of such offences, the Association has made the following recommendations for Members' information and consideration.

#### **2. General Principles**

In preparing this Best Practice, HAFFA is guided by the following general principles:

- (a) In line with various international carriage conventions, as between the customer and the forwarder or carrier, generally the responsibility is on the customer to provide accurate, correct and complete information on the goods to be shipped.
- (b) Customers engaged in the import, export, re-export or transshipment of strategic commodities in Hong Kong must obtain valid licences from the Trade and Industry Department before shipment.
- (c) It is the responsibility of customers to timely provide valid licences for the importation or exportation of strategic commodities. They are the party to ensure that the goods to be imported/exported are the same as those declared on the import/export licences.
- (d) Notwithstanding (a-c) above, under the Import and Export Ordinance (Cap. 60) and the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G), a freight forwarder may be caught by the provisions of statutory offences relating to shipping strategic commodities.
- (e) Some statutes provide for a defence based on, *inter alia*, reasonable diligence or reasonable precaution. Members should at all times be aware of potential liability and should always exercise reasonable due diligence/precaution to ensure or satisfy themselves that the goods they are asked to handle do not consist of strategic commodities.
- (f) Exercising "reasonable diligence" does not require doing everything possible but only that which, under ordinary circumstances and having regard to expense and difficulty, can be reasonably required.

### 3. Recommendations

3.1	<input type="checkbox"/> <b>Request your customers to declare whether their shipments require licence(s).</b> This can be done via the proper declaration under Shipper's Letter of Instruction (SLI) with authorized signature.
3.2	<input type="checkbox"/> <b>In case of doubt</b> on whether certain goods are strategic commodities and hence subject to import/export licensing ( <i>e.g. with generic good descriptions such as <b>integrated circuit, router, signal generator, information security modules, System On-Chips, field programmable logic devices, Network Switches, chipset</b> etc.</i> )
	<input type="checkbox"/> <b>Ask your customers to provide more information</b> , for example: <ul style="list-style-type: none"> <li>- detailed product description</li> <li>- brand name</li> <li>- model number</li> </ul>
	<input type="checkbox"/> <b>Always make enquiry with the Trade and Industry Department (TID)</b> <ul style="list-style-type: none"> <li>- TID hotline for technical assessment (office hour): 2398 5587</li> <li>- TID guidance note: <a href="http://www.stc.tid.gov.hk/english/bsg/LogCompanies.html">http://www.stc.tid.gov.hk/english/bsg/LogCompanies.html</a></li> </ul>
	<input type="checkbox"/> <b>Make use of the following resources to check the control status of commodities</b>
	<input type="checkbox"/> <b>For common dual-use goods, visit TID official Strategic Commodities Control System website (SC Website) <a href="https://www.stc.tid.gov.hk/service/productSearch.do?locale=eng&amp;text=0">https://www.stc.tid.gov.hk/service/productSearch.do?locale=eng&amp;text=0</a> to check the control status.</b>
	<input type="checkbox"/> <b>For case that the search engine does not help</b>
	<input type="checkbox"/> <b>Compare the specifications of the goods to be imported/exported with the descriptions of the equipment or technology and uses set out in the Schedules to the Import and Export (Strategic Commodities) Regulations</b> to determine if the goods are controlled or not. <a href="http://www.stc.tid.gov.hk/english/checkprod/sc_control.html">http://www.stc.tid.gov.hk/english/checkprod/sc_control.html</a>
	<input type="checkbox"/> <b>Make use of TID's Pre-classification Service</b> Based on the technical information provided, TID's technical staff will advise whether the goods require a licence or otherwise. A formal Pre-classification Result will be given. <a href="http://www.stc.tid.gov.hk/english/checkprod/pre_classification.html">http://www.stc.tid.gov.hk/english/checkprod/pre_classification.html</a>
3.3	<input type="checkbox"/> <b>Retain the above records</b> in case of need in future.



#### **4. Disclaimer**

- 4.1 This Best Practice is not obligatory and is provided solely for Members' information and consideration. It is intended to provide a recommendation for Members to perform reasonable due diligence for shipment handling.
- 4.2 Members may consider applying this Best Practice in each case as they may think appropriate. Members should always consider their own operation scheme and requirements. Members may apply the HAFFA Best Practice or adapt them with modifications or adopt and use their own operational procedures, in each case, as they may consider appropriate.
- 4.3 The information in this document is intended for reference purposes only. This information does not constitute legal advice and in all cases must be tailored to the specific circumstances of any transaction.

#### **5. Expiry**

Indefinite

*(End of Best Practice)*