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Census to Delay Implementation of Foreign Trade Regulations

The Census Bureau will push the deadline for implementation of its Foreign Trade Regulations (FTR) to April 5, 2014, from Jan. 8, Census officials said. After discussions with Customs and Border Protection (CBP), which is still training agents on the new rules, Census decided to extend the deadline, which already gave the trade 300 days to comply after publication of the final regulations in March, bureau officials told the Bureau of Industry and Security's (BIS) Regulations and Procedures Technical Advisory Committee (RAPTAC) Sept. 10 (see **WTTL**, March 13, page 8).

Census will publish a Federal Register notice within the next month to extend the deadline formally, they said. Changes to the Automated Export System (AES) Direct process also will be extended to April 5.

Census and CBP also are going ahead with plans for a pilot test of the Advance Export Information (AEI) program. The AEI pilot will test an alternative post-departure reporting system for exports that could replace the current Option 4 program. Under the pilot, participating exporters will file 10 specific data elements pre-departure along with any additional information they would file post-departure.

Census and CBP plan to publish a Federal Register notice in early October calling for volunteers to participate in the pilot. Participation will be open to all U.S. Principal Parties in Interest (USPPI) whether they are Option 4 users or not. Option 4 users who participate will still be able to continue using their Option 4 procedures in addition to anything filed pre-departure as part of the pilot. Applications for participation will be due sometime in December, with the pilot slated to begin in the spring. The pilot will run from five to six months and then be terminated.

More New Faces in Licensing, Policy Roles at State, Justice

Defense exporters will have to deal with new leadership nearly from top through middle management in State's export licensing operations, while a new assistant attorney general is about to take the top national security post at Justice. President Obama named Puneet Talwar to be assistant secretary of State for political-military affairs Sept. 11, replacing Andrew J. Shapiro, who left in April. Over at Justice, John P. Carlin was named

officially Sept. 11 to be assistant attorney general for national security, a post he has held on an acting basis since March 2013 when his predecessor, Lisa O. Monaco, was tapped to be assistant to the president for homeland security.

Talwar is currently a Special Assistant to the President and Senior Director for Iran, Iraq, and the Gulf States on the White House National Security Staff, a position he has held since 2009. Shapiro is now a Managing Director at Beacon Global Strategies LLC, a consulting firm he founded with Michael Allen, Jeremy Bash and Philippe Reines.

Prior to the White House, Talwar was a senior professional staffer on the Senate Foreign Relations Committee from 2001 to 2009 and from 1997 to 1999, and was chief advisor on the Middle East to then-Committee Chairman Joseph Biden. He served on State's policy planning staff from 1999 to 2001. Talwar received a B.S. from Cornell University and an M.A. from Columbia University's School of International and Public Affairs.

Carlin, who will oversee the Justice staff that has led the government's prosecution of export control violations since 2007, has been the principal deputy assistant attorney general and chief of staff for Justice's national security division since 2011. From 2007 to 2011, he held leadership roles at the FBI, ultimately as chief of staff to FBI Director Robert Mueller. From 2001 to 2006, he was an assistant U.S. attorney for the District of Columbia. He holds a B.A. from Williams College and a J.D. from Harvard Law School.

Talwar will be coming to his post just as Ken Handelman is slated to become deputy assistant secretary of State for defense trade controls and head of the Directorate of Defense Trade Controls (DDTC) and Beth McCormick is leaving that position to become director of the Defense Technology Security Administration (DTSA) (see **WTTL**, Aug. 19, page 1). At the same time, DDTC Director of Licensing Kevin Maloney reportedly will be retiring in October, with no replacement announced yet.

BIS to Bar License Exceptions for Unverified List Exports

The Bureau of Industry and Security (BIS) intends to bar the use of license exceptions for any foreign entity identified on its Unverified List (UVL). In a Federal Register proposal Sept. 11, the agency also said it will require exporters of items that are eligible for export as No License Required (NLR) to obtain signed written statements from UVL parties confirming who they are and agreeing to be subject to an end-use check.

The proposed amendment to the Export Administration Regulations (EAR) also will require exporters to file an Automated Export System (AES) record for all exports subject to the EAR involving persons on the UVL and add procedures for requesting removal or modification of a UVL entry. The proposed rules would apply to all exports, reexports and transfers (in-country) involving UVL parties.

"These proposed changes to the UVL enhance the U.S. Government's ability to verify the bona fides of parties to exports, reexports, or transfers (in-country) of items subject to the EAR and provide the U.S. Government increased visibility into such exports, reexports, and transfers involving persons whose bona fides could not be verified," the notice said. For NLR exports, the signed statements from UVL-listed parties prior to

export, reexport or transfer would have to include certification of the end-use, end-user, and country of ultimate destination of items subject to the EAR and consent to an end-use check by the U.S. government. “The end-use check may include checks to any transaction to which that person was a party for items subject to the EAR exported, reexported, or transferred (in country) in the last five years, to enable the U.S. Government to satisfy earlier concerns with the UVL-listed party as well as its concerns with the current transaction,” the proposal’s preamble explained.

In addition, BIS proposed new criteria for listing persons on the UVL. “Examples of actions that could result in a person being listed on the UVL include: the subject of the check is unable to demonstrate the disposition of items during an end-use check; the existence or authenticity of the subject of an end-use check cannot be verified because, inter alia, the subject of the check cannot be located or contacted; or lack of cooperation by the host government authority,” BIS noted.

At the BIS Update 2013 conference in July, BIS Assistant Secretary for Export Enforcement David Mills announced plans for the proposal (see **WTTL**, July 29, page 8). “We are aware of industry’s interest in being warned of suspicious foreign actors but also of its concern about the open-ended nature of the UVL and the need for BIS to provide guidance on how to overcome a U.S. Government-imposed red flag,” he said.

Azevedo Presses for Bali Deals, Return to Multilateralism

New World Trade Organization (WTO) Director-General Roberto Azevedo in his first speech to the WTO General Council Sept. 9 bemoaned the WTO’s failure to reach a multilateral agreement since 1995 and the slow progress on agreements to be presented at the WTO ministerial in Bali in December. “We must send a clear and unequivocal message to the world that the WTO can deliver multilateral trade deals,” he said.

“I think one sentence in my speech that I like was that the intermission is over,” he told reporters in Geneva after his speech to the General Council. “I like that; I think that is the sense that I want to impart. We were at an intermission; we got accommodated with the intermission. I think my message is that: as far as I am concerned that intermission is over,” he told reporters (see **WTTL**, Sept. 9, page 3) .

Azevedo told WTO members that his first goal will be “to try to conclude negotiated outcomes in Bali.” Preparations for Bali have resumed and Azevedo put trade officials in national capitals on notice that they may be needed in Geneva during the next few weeks. He said he has launched a “rolling set of meetings” and consultations with members in a horizontal process “to identify early in the process, where possible trade-offs may lie” and what elements lie “in the realm of possibility.”

“My statement was all about getting people to sit down at the table, show flexibility, show commitment, and negotiate deals,” he said at his press conference. “If you want to fight protectionism, that’s how you do it. There is no other way,” he added.

After Bali, Azevedo said his one, two, three and four priorities will be the Doha Round. While the WTO is much bigger than the Doha Round, the public defines the WTO by

whatever happens in the trade round, he said. The next step will be to see what kind of roadmap can be agreed “that will take us to a process...that will have a very important element on the Doha Round,” Azevedo said.

“It is essential that we breathe new life into negotiations,” he told the General Council meeting. The environment in the WTO has to be changed to achieve that goal, Azevedo said. The negotiations are 12 years old and can’t be thrown away, he said. “We’re going to use” what exists to “create new roads and hopefully those roads and paths will take us to negotiated outcomes,” he said.

Azevedo did not reveal any plans he has for reinvigorating the Doha talks. Any post-Bali roadmap will depend on consultations with WTO members, he said. “People have dreams; I have ideas,” he said, suggesting that discussions will have to start very cautiously and carefully. Even perfectly good ideas can get scuttled if they’re presented by the wrong person or at the wrong time, he said. “When the time comes, you will know,” he said. At the same time, he disagreed with the assessment that 80% of a Doha deal is already in the pocket.

The former Brazilian diplomat acknowledged how Brazil, Russia, India and China (BRIC) are changing the global economy but also coming closer to the center of global economic governance. He also noted the needs of developing countries and that he wants to “make sure their interests are taken into account.”

CAFC Upholds Commerce’s “Price Cap” Methodology

Commerce is entitled to substantial deference in how it determines the “price cap” in antidumping investigations and reviews and courts should not substitute their judgment for the department’s, the Court of Appeals for the Federal Circuit (CAFC) ruled Sept. 9 in a decision that reversed a ruling by the Court of International Trade (CIT) and upheld Commerce’s handling of an administrative review of an order on pasta from Italy.

The government had appealed the CIT decision even though Commerce had followed its instructions on remand and changed its methodology for determining the price cap in the ninth administrative review of the antidumping order on pasta from Italy. The legal challenges to the Commerce rulings brought the case to the CIT four times. “This appeal arrives with a lengthy and complex history,” noted Appellate Judge Alan Lourie, writing for the three-judge panel in *Atar S.R.L., v. U.S.*

“The statutory language at issue here is ambiguous,” Lourie wrote. “Accordingly, Commerce is entitled to substantial deference in its choice of accounting methodology, and, as a reviewing court, we may not substitute one reasonable approach for another according to our own preferences. In addition, we note that Commerce has not advocated a rigid requirement that below cost sales data must be excluded from *all* profit cap determinations,” he added (his emphasis).

The original plaintiff in the case at the CIT, *Atar, S.R.L.*, “did not file substantive briefing or participate in oral argument; instead, Atar submitted papers stating that it ‘has ceased commercial operations and does not possess the resources’ for meaningful

participation,” Lourie noted. “Atar nonetheless urges affirmance of the trade court’s ‘well reasoned and considered decision’,” he wrote. Because data on Atar’s normal value were not available during the administrative review, Commerce had chosen to use a constructed value methodology to determine a dumping margin for the company’s pasta and to set the price cap for inputted profits.

The Statement of Administrative Action (SAA) that accompanied the Uruguay Round Agreements Act “makes clear that, in contrast to sales covering the specific foreign like product, Commerce need not gather the detailed and potentially voluminous data necessary to differentiate sales made within and outside the ordinary course of trade across an entire general category of merchandise,” Lourie explained.

“But relieving Commerce of the requirement to collect such detailed information in every instance does not prohibit its use when available. Here, data collected during the eighth administrative review allowed Commerce to distinguish between above- and below-cost sales of relevant comparison products, and, having such information readily available, Commerce reasonably elected to exclude below-cost sales in its profit cap calculations in this case,” he continued.

BIS, State Get Specific, Contradictory Advice on Electronics

BIS and DDTC wanted more comments on the proposed transfer of items in U.S. Munitions List (USML) Category XI (electronics) to the Commerce Control List (CCL), and they got them. The agencies especially wanted industry views on whether to locate these items in five different categories or combine them into one “mega electronics category.” In more than 40 comments that BIS and State posted on government websites Sept. 12, the answer was yes and no. The request for additional comments was published in the July 25 Federal Register (see **WTTL**, July 29, page 6).

In its comment, Rockwell Collins noted that “controlling military computers, telecommunication devices and radars in chapter 3 of the CCL, as opposed to placing them in existing chapters provided for similar commercial items, increases the possibility of misclassification of these devices.”

In contrast, ITT Cannon requested that the Export Control Classification Number (ECCN) “for specially designed/application specific electronic components (like connectors) not depend on the end item but be placed in an ECCN that covers connectors for all applications. Under the proposed rule it is not clear and we may control electronic components differently based on the ECCN category of the end item/or major component.”

In a familiar pattern from previous category transfers, comments from other companies cited foreign availability of specific products as a reason for placing items under the lowest possible control. “There is wide foreign availability of both amplifier design (Europe- UMS for example, Africa-ELTA for example, Asia-SEDI for example) and semiconductor manufacturing of amplifiers (Europe, Asia),” M/A-COM Technology Solutions wrote. This results in a highly competitive environment, “with widespread global availability of amplifier devices (MMIC and transistor) outside of the United States,” it told the agencies. Some companies questioned specific definitions and

suggested clarification of control parameters. GE Aviation asked BIS to clarify whether “items subject to parameter-based CCL entries will be controlled under such entry, if the item meets the parameter at the time of export and not whether it has potential capability (e.g. dormant capability) to meet the control, so long as that additional capability cannot be executed by the end user without additional activity by the exporters.”

Agilent took issue with the “broad and subjective terms that are susceptible to multiple interpretations and are prone to misinterpretation.” As an example, the company said it was “extremely concerned that the parenthetical phrase ‘(including spectrum analyzers)’ that appears in the XI(b)(3) sub-header and the over-encompassing control ‘built-in signal analysis capability’ of XI(b)(3)(ii) will result in confusion, not clarity.”

Report Highlights Growth of “Global Value Chains”

The growth of cross-border supplying of parts, components and services that go into finished end products as part of “global value chains” (GVCs) will require countries to reconsider their trade and investment policies, contends a report given to leaders of the world’s 20 largest economies (G20) at their Sept. 5-6 meeting in St. Petersburg, Russia.

“The fragmentation of production in GVCs should also be accompanied by at least a changed emphasis in trade and investment policies which takes more actively into account the growing interdependence between policy stances of exporters and importers, host countries and home countries,” says a report prepared jointly by the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD).

“The emergence of GVCs can be observed by looking at how countries increasingly rely on foreign inputs for their own firm exports which may then be further processed in partner countries,” the report notes. “Between 30% and 60% of G20 countries’ exports consist of intermediate inputs traded within GVCs. Comparing 2009 with 1995, GVC participation has increased in almost all G20 economies, and particularly in China, India, Japan and Korea,” it points out (see **WTTL**, Jan. 21, page 1).

The report also notes the challenges and obstacles to GVC participation, especially by developing countries. In addition, it acknowledges the negative impact that such trade can cause. “International competition in GVCs will entail adjustment costs, as some activities grow and others decline, and as activities are relocated across countries. Policy needs to facilitate the adjustment process, including through well-designed productive capacity-building measures, environmental sustainability and labour market, social and competition policies, and through investment in education and skills, as well as infrastructure and technology,” it says.

Some advanced developing countries have benefitted particularly from their participation in GVCs, the report notes. While income from trade flows within GVCs doubled between 1995 and 2009, for China it has increased 6-fold, India 5-fold and Brazil 3-fold, the report states. At the same time, in Germany, jobs associated with GVCs doubled to about 10 million jobs between 1995 and 2008. The report opines that “ambitious economic integration agreements that more coherently cover all dimensions of market

access” can help countries maximize the gains from production sharing. “At the same time, open and stable trade and investment policies need to be accompanied by a range of other sound policies to pave the way for any economy to access, and benefit from, those value chains,” the report asserts.

Census Extends Deadline for Reporting Split Shipments

Joe Cortez, chief of Census’ regulations and outreach branch, told BIS’s RAPTAC Sept. 10 that Census has changed requirements for filing Automated Export System (AES) changes for split shipments. Rather than requiring U.S. Principal Parties in Interest (USPPIs) to file the change to their Electronic Export Information (EEI) within 24 hours after a shipment is split at the same port and sent on different carriers, USPPIs will have seven days to update the EEI, he said. This will apply to all modes of transport and was effective as of Aug. 23.

Before final revisions to the Foreign Trade Regulations (FTR) were published in March, shippers had complained that old reporting rules dating back to 2008 needed to be changed to apply to all modes of transportation and not just air. Census responded by revising the rules to cover all modes but left in the 24-hour requirement. Industry continued to complain about the short reporting deadline, saying it “simply won’t work,” Cortez said.

To address those concerns, Census posted a change in policy in an Aug. 23 FTR Letter on its website. “Since the publication of the final rule, the Census Bureau received feedback from the trade that the new 24 hour requirement cannot be implemented by air, air express, rail, or truck carriers without considerable IT and process investments,” the letter said. “Therefore, the trade community believes that this requirement would impose an undue burden and add significant cost to their operations,” it noted. Census and CBP agreed to revise the split shipment reporting requirement to read as follows:

“A shipment covered by a single EEI transmission booked for export on one conveyance, but divided prior to export where the exporting carrier at the port of export will file the manifest indicating that the cargo was sent on two or more of the same conveyances leaving from the same port of export of the same carrier within 24 hours by vessel or 7 days by air, truck, or rail. For the succeeding parts of the shipment that are not exported within time frame specified above, a new EEI must be filed and amendments must be made to the original AES record.”

* * * Briefs * * *

IRAN: State Sept. 6 renewed Japan’s exception from Iran sanctions based on “additional significant reductions in the volume of its crude oil purchases from Iran,” State said. It also renewed exemption for 10 EU countries because they have not purchased Iranian oil since July 1, 2012.

MORE IRAN: OFAC Sept. 10 issued two general licenses authorizing “certain humanitarian related activities by nongovernmental organizations in Iran and athletic exchanges” between Iran and U.S. General License E authorizes activities related to humanitarian projects to meet basic human needs, non-commercial reconstruction projects, environmental and wildlife conservation projects, and human rights and democracy building projects. General License F authorizes “importation and exportation of certain services in support of professional and

amateur sports activities and exchanges,” including activities related to exhibition matches and events, sponsorship of players, coaching, refereeing and training.

RUSSIA: In keeping with WTO accession commitments, Russia Sept. 13 joined WTO Information Technology Agreement (ITA) as 78th member.

EXPORT ENFORCEMENT: Philip Chaohui He, aka Philip Hope, pleaded guilty Sept. 3 in Denver U.S. District Court to conspiracy to violate AECA and smuggling. He attempted to illegally export to China radiation-hardened computer memory circuits used in satellite communications without State licenses. As only employee of Oakland-based Sierra Electronic Instruments (SEI), he purchased 312 circuits from Aeroflex Colorado Springs in May 2011, February 2012 indictment claimed (see **WTTL**, Aug. 12, page 8). Sentencing is set for Dec. 18.

SANCTIONS: World Fuel Services Corporation (World Fuel), Miami, Fla., agreed Sept. 9 to pay \$39,501 fine to settle OFAC charges of violating Iranian Transactions Regulations (ITR), Sudanese Sanctions Regulations (SSR), and Cuban Assets Control Regulations (CACR) in 2008 and 2009. Charges involve alleged facilitation of sale by one of its non-U.S. affiliates of fuel for vessel at port in Iran; facilitation by U.S. subsidiary of services and fuel purchases for aircraft that stopped in Khartoum, Sudan; and coordination services provided by two U.S. subsidiaries for 30 unlicensed flights to Cuba. World Fuel voluntarily self-disclosed alleged violations of ITR and SSR, but not alleged violations of CACR, OFAC said.

TRADE PROMOTION AUTHORITY: In letter Sept. 9 to Senate Finance and House Ways and Means Committee leadership, eight industry associations urged “passage of TPA legislation this year to help ensure high-standard outcomes in pending and future trade agreements that support U.S. growth and jobs.” Signers include Chamber of Commerce, American Farm Bureau Federation and Coalition of Service Industries.

TPP: USTR Michael Froman held call Sept. 9 for 170 stakeholders, including business, labor, environment, public health, academia, advocacy groups, and some members of USTR’s Trade Advisory Committee, to discuss TPP negotiations. “We’re at a stage in TPP where we’re going to have to make difficult decisions. I imagine that not everyone will be 100 percent pleased with every decision, but we can guarantee that we will seek your input, we will consult with you,” Froman said, according to USTR release.

JCCT: Mid-year review of progress of Joint Commission on Commerce and Trade (JCCT) appears to have produced little. U.S. side of deputy-level talks in Beijing week of Sept. 9 were led by Acting Deputy USTR Wendy Cutler and Commerce Under Secretary Francisco Sánchez. Discussions focused on past JCCT commitments and U.S. priorities involving intellectual property rights, pharmaceuticals, government procurement, investment, services, industrial policies, regulatory obstacles and agriculture (see **WTTL**, Jan. 7, page 2).

PIPE: ITC made “sunset” determination on 5-1 vote Sept. 12 that ending antidumping order on welded large diameter line pipe from Japan would likely cause renewed injury to U.S. industry.

EX-IM FRAUD: Add two more business owners and farmers to those sentenced for defrauding Ex-Im Bank. Teolinda Briseyda Angeles, owner of BNB Pembroke Pines, Inc., Miami electronics company, was sentenced Sept. 10 in Miami U.S. District Court to one year and one day in prison for her role in scheme to defraud Ex-Im Bank of nearly \$446,876. She pleaded guilty June 26. Ongoing investigation into network of export credit insurance fraud schemes involving exports into South America has resulted in criminal charges against seven defendants, seven convictions, and almost \$15 million in criminal forfeiture and restitution, Ex-Im noted.

MORE EX-IM FRAUD: Alfredo Rodela-Campos, Mexican farm owner, was sentenced Sept. 11 in El Paso U.S. District Court to three years’ probation for his role in scheme to defraud Ex-Im Bank of approximately \$291,550. He pleaded guilty Jan. 8 (see **WTTL**, Sept. 2, page 9).