



A+B INTERNATIONAL TRADE UPDATE

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Census Proposes Rule on Mandatory AES Filing Requirements

On February 17, the U.S. Census Bureau ("Census") issued a proposed rule to overhaul 15 C.F.R. Part 30 to require filing of export information through the Automated Export System (AES) or AESDirect for all shipments that currently require a Shipper's Export Declaration (SED). This proposal followed an advanced notice of proposed rulemaking on October 22, 2003. Census will accept comments until April 18, 2005, before it publishes a final rule. The effective date for the final rule is anticipated to be in the fall of 2005, 90 days after its publication in the *Federal Register*.

The proposed rule states that electronic filing will enhance the government's "ability to prevent the export of certain items by unauthorized parties to unauthorized destinations and end users, because AES aids in targeting and identifying suspicious shipments prior to export"

Census proposes to remove the requirements in the regulations for filing a paper SED (Form 7525-V) and for filing an intransit SED (Form 7513). The rule also proposes to revise postdeparture filing requirements so that only U.S. Principal Parties in Interest (USPPIs) may apply for postdeparture filing status, and only pursuant to certain requirements. Agents would no longer be able to apply on behalf of the USPPIs. Additionally, Census would eliminate the requirement of attaching SEDs to manifests and replace that provision with a requirement to show proof of filing citations on the bill of lading, air waybill, or other commercial loading documents attached to the manifest. The proposed rule also includes a number of other provisions to affect the transition to electronic filing.

Among other proposed changes and clarifications, Census proposes to revise the language in the regulations that describes the proper method of reporting the cost of repairs of goods and the cost of reporting the value of replacement parts exported, in order to specify that "goods previously imported for repair and alteration only, and reexported, shall only include the value for parts and labor," and that "goods exported as replacement parts shall only include the value of the replacement part."

The notice also includes proposed changes to penalty provisions. Census proposes to add a new subpart to the regulations that would

Comments and questions from readers are welcome.

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increase the penalty from \$100 to \$1000 per day for filing false or misleading information, failure to file, furtherance of illegal activities, or delayed filing violations, with a new maximum penalty of \$10,000 per violation. For knowing failures to file or filings of false or misleading information, the new rule would allow civil penalties of up to \$10,000 per violation, and criminal penalties per violation of up to \$10,000, imprisonment of up to five years, or both.

EU Implements New Rules for Wood Packaging Materials, Postpones Debarking Requirement



The EU continues to insist that it will implement the debarking requirement eventually.

After extensive lobbying by the United States, Russia, China, and Canada in opposition to the anticipated costs of implementing the new rules, the EU announced in late February that it would postpone for one year the scheduled March 1 implementation of a new rule requiring debarking and fumigation of all wood packaging materials entering the EU. The EU continues to insist, however, that it will implement the requirement eventually.

According to the U.S. Animal and Plant Health Inspection Service (APHIS), the EU did implement a number of other new requirements on March 1. Under the EU's new rules, all newly assembled, repaired, or recycled unprocessed raw wood packaging materials (hardwood and softwood) entering the EU must be either heat treated or fumigated and officially marked according to international standards. Dunnage must also be heat treated or fumigated and marked. Alternatively, until December 31, 2007, dunnage may be imported without heat treating or fumigation and marking if it is free from bark and from signs of live pests.

The EU exempted from its new rules wood packaging materials less than 6mm and processed wood produced from glue, heat, and pressure or a combination thereof.

Ways and Means Committee Issues Advisory on Miscellaneous Corrections and Tariff Legislation

A March 10 advisory from the Subcommittee on Trade of the U.S. House of Representatives' Committee on Ways and Means asked members of Congress to introduce all contemplated tariff legislation or miscellaneous corrections bills related to trade laws by April 28. The subcommittee's goal in setting this deadline was to ensure that these bills can be included in a subsequent request for public comments. In addition to requesting comments from the public, the subcommittee will ask the Office of the U.S. Trade Representative (USTR), the International Trade Commission (ITC), and the U.S. Bureau of Customs and Border Protection (CBP) to review each bill. The advisory also notes the possibility "that bills which create revenue losses, operate retroactively, or attract significant controversy or opposition" may not be included in the resulting trade bill.

CITA Imposes Quotas on Certain Wool Goods from Ukraine, Reinstates Visa Requirements

The Committee for the Implementation of Textile Agreements (CITA) has imposed quotas on four categories of textile products of wool from Ukraine as a result of an amendment to and extension through December 31, 2006, of the bilateral textile agreement with Ukraine. The quotas currently apply to goods exported during the 2005 calendar year but are subject to change if Ukraine joins the World Trade Organization (WTO).

As a result of these new quotas, CITA reinstated export visa requirements for textile products in these Ukraine quota categories. Exports lacking visas and shipped on or after March 25 will be denied entry. CITA has also removed Ukraine from the list of countries subject to CITA's procedures for overshipments against 2004 quotas.

U.S. Extends Normal Trade Relations to Laos

A trade agreement signed in September 2003 between the United States and Laos was finally given effect by the Miscellaneous Trade and Technical Corrections Act of 2004. As a result, the United States has extended normal trade relations to Laos. Effective February 4, products of Laos entered or withdrawn from warehouse may be entered using the Column 1 duty rates. Cuba and North Korea are now the only two countries to which the Column 2 duty rates apply.

USTR Publishes List of ATPA Countries Subject to Compliance Reviews

In a January 18 *Federal Register* notice, USTR announced its decision to review certain trade practices in Peru and Ecuador to determine whether these countries are in compliance with eligibility rules under the Andean Trade Partnership Act (ATPA). These reviews are based on petitions regarding Peru received from Engelhard, Princeton Dover, LeTourneau, Duke Energy, and Parsons Corporation and petitions regarding Ecuador received from AFL-CIO, Human Rights Watch and US/LEAP, Chevron Texaco, and Electrolux Home Products. The only review USTR terminated was the review of American Cast Iron Pipe Company's comments on Ecuador's compliance. USTR will announce the results of these reviews on May 31.

Also, in a February 4 *Federal Register* notice, USTR requested comments on whether Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries are meeting the eligibility criteria, including a commitment to undertake WTO obligations and to protect intellectual property rights. The beneficiary countries are Bolivia, Colombia, Ecuador, and Peru. USTR's comment deadline was March 18, and USTR must submit a report to Congress by April 30.

USTR Selects Product Petitions for GSP Review

On February 25, USTR issued a notice listing the product petitions it has accepted for a full review in its Generalized System of Preferences (GSP) 2004 Annual Review. A number of selected petitions involved requests to add to the list of GSP-eligible products. Requested additions included certain dates and certain carpets and other textile floor coverings. USTR also accepted a petition to remove the GSP status of polytetrafluoroethylene from Russia, and USTR may consider this request with respect to other countries as well. USTR accepted four petitions requesting waivers of GSP Competitive Need Limits.

USTR will hold public hearings on March 24 and will announce its final decisions on or about June 30.

UNECE Announces Initiative in Electronic Invoicing



UNECE asserts that e-invoicing offers opportunities for cost reduction to businesses of all sizes, increases accountability, helps fight corruption, and assists in the transition to paperless trade.

After the first meeting in January of the United Nations Centre for Trade Facilitation and Electronic Business's (UN/CEFACT) Trade Facilitation project group, the United Nations Economic Commission for Europe (UNECE) issued a press release on January 24 regarding the upcoming release of its revision to the UN/CEFACT Recommendation 6 on the Invoice for International Trade. The goal of the Trade Facilitation project group is to release a draft of its revision at the June 2005 International Forum on Trade Facilitation in Geneva.

UNECE asserts that electronic invoicing ("e-invoicing") offers opportunities for cost reduction to businesses of all sizes, increases accountability, helps fight corruption, and assists in the transition to paperless trade. Unfortunately, UNECE believes that, despite implementation of legal frameworks by many governments, e-invoicing has been hindered by the lack of common international standards and of uniform implementation of the necessary legal foundations.

Consequently, the draft revision will attempt to tackle such issues as defining the necessary data elements for e-invoicing, identifying information needed to allow financial institutions to process e-invoices, determining requirements for assuring authenticity and integrity of content, and defining electronic signature requirements. The project group's goal is to have a global focus eventually but to begin with the EU and neighboring countries.

OFAC Amends Cuban Assets Control Regulations, Some Senators Not Satisfied

The Office of Foreign Assets Control (OFAC) issued a final rule on February 25 that amended the Cuban Assets Control Regulations to clarify the meaning of the phrase "payment of cash in advance" as it is used in the restrictions on payment and financing terms for authorized exports from the United States to Cuba.



According to the new rule, “payment of cash in advance” means that payment is received by the seller or the seller’s agent prior to shipment of the goods from the port at which they are loaded.



[T]he Senate bill states: “It was and is the intent of Congress that a seller of a product... receive payment only before a Cuban purchaser takes physical possession of that product.”

According to the new rule, “payment of cash in advance” means that payment is received by the seller or the seller’s agent prior to shipment of the goods from the port at which they are loaded. OFAC also included in its rule a grandfather provision in the form of an amendment to 31 C.F.R. § 515.533(d) to provide a general license authorizing U.S. financial institutions to process payments received for certain exports that are shipped prior to the receipt of payment, if the goods are shipped and if payment is received by a U.S. banking institution before March 24.

Other than certain financing by third-country financial institutions, “payment of cash in advance” is the only allowable method of payment for authorized sales of agricultural items to Cuba, so a clear definition of this term is important.

Just prior to publication of OFAC’s new rule, a group of senators representing agriculture-exporting states introduced legislation (S. 328) to provide a different meaning of the term in question. Unlike OFAC’s rule, the Senate bill states: “There is nothing in either the Trade Sanctions Reform and Export Enhancement Act of 2000 itself or its legislative history to support the view that Congress intended payment to be made in advance of the shipment of goods from this country to Cuba. It was and is the intent of Congress that a seller of a product . . . receive payment only before a Cuban purchaser takes physical possession of that product.”

S. 328 also asks for certain additional liberalizations of trade with Cuba, including a general license to allow U.S. agricultural producers to travel to Cuba in conjunction with sales or marking of their goods and a provision to allow U.S. banks to handle certain cash payments involved in agricultural sales, indicating that the debate over trade with Cuba will continue during this Congress. Finally, Senator Max Baucus (D-MT) has indicated that he will hold up Senate confirmation of nominations to fill senior Treasury Department positions until the issue is resolved to his satisfaction.

State Department Fines General Motors and General Dynamics \$20 Million

After the State Department issued a draft charging letter that proposed to prosecute General Motors for violations of the International Traffic in Arms Regulations (ITAR), the company agreed to a consent decree under which it will pay a civil fine of \$10 million and spend \$5 million more to improve its internal compliance program. The draft charging letter alleged 248 ITAR violations, involving release of defense-related technical data and articles to foreign nationals in Australia, Canada, Switzerland, and elsewhere.



These fines are one of many recent examples of the State Department's increasing enforcement efforts.

As the purchaser of certain divisions of General Motors and therefore a “legally liable successor,” General Dynamics was also named in the State Department’s letter and it too will have to spend \$5 million to enhance its internal compliance programs.

These fines are one of many recent examples of the State Department’s increasing enforcement efforts. In the same week that the State Department announced the consent decree involving General Motors and General Dynamics, it also announced a consent decree under which ITT Industries will pay \$8 million for alleged ITAR violations.

BIS Focuses on Enforcement of Deemed Export Controls



The report called for a tightening of exceptions to the deemed export rule and for greater outreach to industry to remind it of its deemed export obligations.

A March 2004 report by the Department of Commerce’s Office of Inspector General, entitled “Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.,” has increased the focus of the Department of Commerce’s Bureau of Industry & Security (BIS) on deemed export violations. The report called for a tightening of exceptions to the deemed export rule and for greater outreach to industry to remind it of its deemed export obligations.

BIS’s current interest in deemed exports is also evidenced by regulatory actions, such as two final rules published on November 5 regarding high-technology deemed exports, both of which instituted “Foreign National Review” (FNR) requirements for certain programs. The FNR procedures require exporters to submit requests containing specified information to BIS and to await official notification from BIS before using certain license exceptions. Arguably, these requirements could limit the flexibility of the license exception.¹

BIS has also been active on the enforcement front with respect to deemed exports, and during a March 8 presentation at an American Bar Association seminar on developments in export controls enforcement, BIS Special Agent in Charge Julie Salcido responded to a question about increases in deemed export enforcement by noting that violations are often discovered during routine visa review processes. Salcido also discussed the Lattice Semiconductor case, which settled in September 2004 with Lattice Semiconductor paying a \$560,000 civil penalty for violations that included deemed export violations. In June 2004, Pratt & Whitney agreed to pay a \$150,000 civil penalty for illegal exports of technical data and deemed exports. It appears likely that enforcement efforts by BIS in the deemed export area will continue.

¹ For more information on BIS’s recent revisions to its deemed export controls see “Recent Developments in U.S. Export Regulations,” *Alston & Bird International Trade and Regulatory Advisory* (Jan. 31, 2005), at <http://www.alston.com/articles/Recent%20Developments%20in%20U.S.%20Export%20Regulations%201-05.pdf>.

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