

Vol. 30, No. 37

September 20, 2010

Customs Steps Up Enforcement of AES Violations

Exporters are complaining about an upsurge in penalties that Customs and Border Protection (CBP) is imposing for violations of Census requirements for filing export information through the Automated Export System (AES). With fines of \$10,000 per violation now available, CBP port officials have started to issue penalty notices for a range of errors made in Electronic Export Information (EEI) filings, but the most common violation being cited is the entry of the wrong port of export on the submission. Customs officials play down the penalties. "It's not as big as they [exporters] make it sound," one official told WTTL. "All penalties have been mitigated to some degree," he added. First-time violations are drawing only a \$250 fine, the official noted.

After an initial period of informed compliance after AES filing became mandatory, CBP began enforcing the rule in January 2009. Penalty notices are issued by each port and often cover several different violations, so statistics on the extent of fines for AES violations are elusive. In almost all cases, a Customs official said, cargo has been allowed to move despite EEI violations.

Another violation being cited is the failure to include the name of a carrier in the EEI. Filers in some cases were putting "unknown" in the carrier box on EEIs, but Census has changed AES to issue an error message when no carrier name is given. Penalty notices are also being issued to filers that claim goods are sold en route or on the water, but are not coming back and entering consignee names after the sale within the four days allowed.

Some exporters have sought the help of Census to get the fine removed. Census officials say they will try to help when possible but often find the CBP notice was warranted. They say the first route of appeal should be to the Fines, Penalties and Forfeiture (FP and F) office at each port. The wrong port of export violation can occur when carriers change the port selection without informing the filer or when the filer knows about the change but fails to amend its EEI. "What the regulations state is to report what you know to be true at the time," one official said.

U.S. Defends "Buy American" in China WTO Complaint

Behind the U.S. decision announced Sept. 15 to ask China for World Trade Organization (WTO) consultations on the antidumping (AD) and countervailing duties (CVD) Beijing imposed on imports of American grain-oriented electric steel (GOES) is Washington's need to defend the "Buy American" requirements in the 2009 stimulus act. Although U.S. trade officials claimed the case was narrowly targeted at Beijing's treatment of GOES, a potential WTO complaint could



also challenge Beijing's administrative procedures in AD and CVD cases and seek to stem future Chinese trade remedy actions against U.S. imports. "There are a number of flaws in how they conduct investigations," one trade attorney told WTTL. "They don't have any transparency in the process and they don't explain the reasons for their findings," he said.

Along with the GOES case, the U.S. Trade Representative's (USTR) office said the U.S. has asked China for consultations on Chinese restrictions on foreign providers of electronic payment services that handle credit card transactions. The credit card case has been expected since June (see **WTTL**, June 21, page 1). "China has created a 'national champion' in allowing only CUP [China Union Pay] to provide these services," a USTR statement said.

Although U.S. producers of GOES, AK Steel and Allegheny Ludlum, say they have not received any direct or indirect business for this product because of the Buy American rules, the Chinese claimed there was a link in the production supply chain that resulted in subsidies for their products. One trade attorney suggested the U.S. has to fight China's GOES ruling because allowing it to go unchallenged could result in other countries bringing similar cases against U.S. exports they will claim have also benefitted unfairly from the Buy American program.

China's case against GOES was the first CVD case it has ever launched. The Chinese have also initiated three other CVD cases against U.S. and European imports that Beijing claims have benefitted from Washington's bailout of the auto industry and farm subsidies and European aid for its farmers. Another trade lawyer said China's launching of the cases against U.S. imports was in retaliation for Washington's imposition of duties on Chinese tires in 2009. "Someone in China said they were sick and tired of the U.S. steel industry complaining about Chinese subsidies, so they decided to go against a U.S. steel product and this is the only steel product sold in China," the attorney said.

Neighbors Claim U.S. Labeling Law Disrupts Market

Canada and Mexico locked horns with the U.S. Sept. 14-15 during a rare public WTO dispute-settlement panel hearing on complaints against U.S. country-of-origin labeling (COOL) requirements for imported beef. The two NAFTA neighbors claimed the law is disrupting an integrated North American market. While the U.S. defends the labeling rule as a way to provide consumers information and avoid confusion, countries participating in the dispute contended the COOL rules are unfair technical barriers to trade.

In addition to the primary complainants, Canada and Mexico, about a dozen third-party countries are participating in the case. This large number indicates the significance of the COOL rules to their commercial interest, a representative of one of the countries told WTTL. Australia, New Zealand and Brazil have a particularly strong interest, he said.

During the hearing, a U.S. official claimed more than 40 WTO members have country-of-origin labeling requirements. He said the measures provide consumer information and "prevent confusion about the origin of meat cuts." But a Canadian official countered by saying the COOL rule doesn't have a legitimate purpose and "hardly serves the purpose of providing information to consumers." The COOL measure "has distorted the market with the sole purpose of protecting the U.S. cattle industry, and thereby disrupted what was previously a mutually beneficial trade relationship," Mexican Ambassador Fernando de Mateo told the panel. The COOL measure "has disrupted the integrated Mexico-U.S. market and has modified the conditions of competition to the disadvantage of Mexican cattle compared to like U.S. cattle," the ambassador said.

A Canadian official said the U.S. has tried to downplay the impact of the COOL measure. Four of the top five U.S. slaughterhouses, which account for over two-thirds of capacity in their markets, have restricted their use of Canadian-born livestock, he said, naming John Morell & Co., Tyson Fresh Meat Port Division, Cargill Meat Solutions Corporation and Hormel Foods.

Geithner's Ambiguity Keeps China Currency Legislation Alive

In carefully parsed testimony to Senate and House committees Sept. 16, Treasury Secretary Timothy Geithner appeased political pressure for legislation aimed at China's undervalued currency, while using the threat of legislation to warn Beijing it must go further and faster to let the renminbi appreciate. Administration officials and Democratic leaders are expected in the coming days to discuss the potential for legislation, at least in the House, before lawmakers recess at the end of September or early October and go into full campaign mode. With the economy weighing heavily on both political parties, an anti-China vote looks very appealing, and the White House may not want to get in front of the train.

At least 145 House Democrats and Republicans have signed up to co-sponsor a bill (H.R. 2378) that Reps. Tim Ryan (D-Ohio) and Tim Murphy (R-Pa.) have sponsored to make China's currency policy subject to U.S. countervailing duty rules. "We view Secretary Geithner's remarks as an invitation for Congress to pass strong WTO-consistent legislation to address illegally undervalued currencies," said Charles Blum, executive director of the Fair Currency Coalition, an industry group pushing the Ryan-Murphy bill, after the Treasury secretary testified.

Geithner declined to say whether the Obama administration supports or opposes currency legislation. He said the test of any bill would be whether it is consistent with WTO obligations and is effective. He said he will "take a careful look" at the Ryan-Murphy measure, but claimed he was not in a position to make a legal assessment about its WTO consistency. Nonetheless, he cautioned lawmakers. "I believe that any approach we adopt that is inconsistent with international obligations will be ineffective and creates no incentive for China to change the practice we're concerned about," Geithner told the House Ways and Means Committee.

"We have to be confident that if we deploy it, it's going to offer more benefits in terms of expanded market access than risks to loss of economic advantage," he continued. "We have to be careful how we approach this, so we get it right. What we don't want to do is an approach that is going to end up leaving us with no more effective tools than we have today," he stated. Earlier in his testimony, Geithner cited a recent International Monetary Fund study that found the renminbi to be significantly undervalued. "We share that assessment," he said. "We are concerned, as are many of China's trading partners, that the pace of appreciation has been too slow and the extent of appreciation too limited," he added.

Spin Punctuates Acrimony in Boeing WTO Dispute

With a dispute-settlement panel's preliminary and still-confidential report that claims Boeing is receiving illegal subsidies from the U.S. and state governments, the WTO has produced a grand slam of rulings against subsidies given to the aircraft industries of the U.S., European Union (EU), Brazil and Canada. If the panel's findings remain unchanged when issued in final form in a few months, pressure is likely to mount on all aircraft-building nations to enter talks to strengthen international rules for civil aircraft subsidies.

In the meantime, U.S. and EU sides revved up their spin machines after the WTO panel released its interim ruling Sept. 15 to France, the EU and the U.S. All sides are claiming victory. The dispute still has a long way to go as the parties await the final panel report and almost certain appeals by both the U.S. and EU of panel findings with which they disagree.

The report puts the record straight, claimed Jean-Louis Borloo, French minister of development, and Dominique Bussereau, secretary of state of transport, in a joint statement. The conclusions condemn "massive subsidies" received by Boeing as violating WTO rules, they said. The European subsidies for Airbus in a related case were on a scale much lower than those received by Boeing, they argued. EU Trade Commissioner Karel De Gucht issued a statement saying, "The analysis conducted appeared very thorough and its conclusions support the EU's view in the

disputes. A more detailed assessment is needed but I believe even more strongly than before that the question of subsidies to aircraft manufacturers can be settled only by way of negotiations.” A USTR spokesperson confirmed that the U.S. has received the panel report. “In regards to the European claims, I will say that there have been a number of significant inaccuracies in the news articles we have read,” she added. The EU complaint targeted alleged subsidies Boeing received from NASA, the Defense and Commerce Departments, as well as measures maintained by the states of Washington, Kansas and Illinois.

“If today's reports are accurate that some \$3 billion of the EU's claims were upheld by the WTO, excluding the claims that relate to past programs long ago remedied by Congress, then the ruling amounts to a massive rejection of the EU case and confirms that European launch aid to Airbus stands as the single largest and most flagrant illegal subsidy in the aerospace industry,” Boeing said in a statement.

Report on Obama's Export Initiative Fails to Impress Industry

A status report from the White House Sept. 16 on President Obama's National Export Initiative (NEI) drew skepticism and some derision from representatives of the business community who say the administration's efforts are too small to achieve the goal of doubling U.S. exports in five years. Industry sources also complained that the report cites the president's goal of resolving problems with the U.S.-Korean Free Trade Agreement and getting it approved but failed to mention pending FTAs with Colombia and Panama. “The Cabinet's blueprint plan to the president does offer some encouragement, but overall it falls short of calling for important fundamental changes in U.S. policies and programs we believe are necessary,” said National Association of Manufacturers President and CEO John Engler.

The report was developed by the Export Promotion Cabinet, which comprises the secretaries of Commerce, State, Treasury, Agriculture and Labor and the heads of all the trade-related government agencies. It says “progress is being made. Exports [of goods and services] in the first six months of this year were 18 percent higher than exports in the first six months of 2009.”

Among the steps the report recommends are: an outreach campaign to raise awareness of export opportunities and government assistance for U.S. small and medium-sized enterprises; bringing more international buyers to U.S. trade shows and encouraging more U.S. companies to participate in international trade shows; and implementing an export promotion strategy for six “next tier” markets (Colombia, Indonesia, Saudi Arabia, South Africa, Turkey and Vietnam).

* * * Briefs * * *

SHRIMP: Court of Appeals for Federal Circuit rejected appeal by Ad Hoc Shrimp Trade Action Committee Sept. 8, reversing and remanding earlier CIT ruling in group's favor. Appellate court said Commerce acted reasonably during first administrative review of antidumping order on shrimp from Vietnam when it used survey data on Asian shrimp production and switched policies to no longer use data from unprofitable firms.

IRAQ: OFAC in Sept. 13 Federal Register terminated Iraqi Sanctions Regulations and published new Iraq Stabilization and Insurgency Sanctions Regulations.

ITAR: DDTC posted guidance on its website Sept. 13 clarifying policy of giving priority to licenses for exports to Iraq and Afghanistan to support U.S. and coalition forces or troops ready to deploy.

POLYVINYL ALCOHOL: Celanese Chemicals Ltd., appears to have gained very little from its long legal fight to get antidumping order against imports of polyvinyl alcohol from Taiwan. ITA Sept. 8 issued preliminary ruling that imports were being dumped at margin of 3.02%. ITA had terminated firm's original petition in September 2004 after ITC issued preliminary negative injury determination. Celanese appealed ITC decision to CIT and won reversal of ITC decision, which Court of Appeals for Federal Circuit affirmed.

OFAC: Treasury is now accepting electronic filing of export licenses for exports to Iran and Sudan subject to TSRA. OFAC until recently accepted only paper applications.