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Census to Eliminate Option 4 Except for Bulk Shippers

The Census Bureau plans to eliminate the availability of Option 4, post-departure filing of export documentation, for most exporters except for bulk and agriculture commodity shippers. A proposal to amend the Foreign Trade Regulations (FTR) to adopt this new policy is expected to be published by early summer, according to Census officials. The change reflects the end of a four-year fight between Census and Customs and Border Protection (CBP) over Option 4. CBP has been pushing to eliminate Option 4 and require all exporters to meet advance-filing requirements.

> "The post-departure Option 4 program will be revamped," William Bostic Jr, Census assistant director of economic programs, told the Bureau of Industry and Security's (BIS) Regulations and Procedures Technical Advisory Committee (RAPTAC) April 13. "It will only be for bulk and agriculture" products, he said; noting that fertilizer products would not qualify because of security concerns.

Bostic admitted the change will "significantly" reduce the number of exporters able to use Option 4. There have been estimates that about 20% of U.S. exports are filed through Option 4 in the Automated Export System (AES), but some industries claim as many as 40% of their members use the option. Companies that operate "just-in-time" supply chains or provide emergency repair parts and services, such as aviation parts firms, could be most affected by the proposed change. Census will maintain a list of bulk products that will be eligible for Option 4. This list won't be in the regulations, so it can be updated easily, Bostic said. The proposed change to the FTR also will end the $2,500 reporting threshold for several types of products, including household goods, temporary exports and carnets. AES filing will be required for these items regardless of value.

"Those who qualify for [Option 4] will have to reapply," Bostic said. "No one will be grandfathered in," he added. "When Option 4 came about, I think there was a business case for it," he stated. "Today, in the electronic environment, information flows a lot quicker and a lot of companies have the information that they could submit pre-departure," he said. There will be a comment period for the proposed rule changes, and if companies "can present a business case [for keeping Option 4], then we will look at it," Bostic said.

Chinese May Have Defused Fight over Indigenous Innovation

China may have defused a looming battle with the U.S. over its indigenous innovation initiative with the publication April 10 of proposed changes that could narrow the scope of the program and also give products based on foreign intellectual property the chance to participate in the program. The draft notice published by the Ministry of Science and Technology (MOST), the

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National Development and Reform Commission and the Ministry of Finance identifies the six product areas that will benefit from Chinese programs to support domestic industries. The six areas are: computing and application hardware, telecommuications hardware, modern office equipment, software, new-energy products and highly efficient energy-reducing products.

> Deputy U.S. Trade Representative (USTR) Demetrios Marantis was in Beijing discussing the innovation program with the Chinese, but the announcement apparently was drafted before his arrival. "We appreciate efforts made within the Chinese government to try to address our concerns, and welcome the opportunity to provide public comments on the new circular," a USTR spokesperson said. "We are studying the new draft measure and will continue to make our views on this issue and our broader concerns known to the Chinese," the spokesman said in an e-mail.

"There are several noticeable and welcome changes between the 2009 and 2010 accreditation requirements, many consistent with recommendations proposed by the US-China Business Council (USCBC)," the council said in a notice on its website. The National Association of Manufacturers (NAM) also said it was pleased with the proposed changes. "This is a good first step that could result in greater opportunity for U.S. companies to compete in China's government procurement market," said NAM Vice President Frank Vargo, who also said the changes highlight the need for China to join the World Trade Organization's Government Procurement Agreement.

"Though the revised accreditation requirements are a step forward, several significant issues in China's indigenous innovation policies remain," USCBC also noted. "In particular, the notice does not address the use of the product list or its link to government procurement preferences," it added. In addition, the changes "do not clear up questions about the relationship between the national product list and the continued validity and use of provincial- and local-level product lists that have been compiled based on discriminatory accreditation criteria," USCBC said. The council noted improvements in program requirements dealing with intellectual property, trademark registration and technology requirements. Under the innovation program, the Chinese will create a Catalogue of National Indigenous Innovation Products that will be eligble to receive public support in accordance with Chinese law, according to a USCBC translation of the notice.

Gates Won't Reveal Final Decisions from Export Control Review

Defense Secretary Robert Gates will describe a three-phase plan the White House has developed for implementing the results of its review of U.S. export controls in a speech he will deliver April 20, but he won't provide details on what changes are likely to come from the reform effort, according to sources. For most of the implementation plan, no final decisions have been made, these sources say. Gates' speech to the Business Executives for National Security (BENS) will mostly lay out his own vision of where he wants the reforms to go, which may also end up being what the White House wants, these sources say.

> Phase three of the plan has already drawn much attention because it calls for a feasibility study to determine the advantages and disadvantages of consolidating all export licensing activities in a single agency. The interagency working group that has been conducting the review of export controls since August 2009 has been told to undertake the feasibility study and report back to senior administration officials by the end of the year. Because consolidation of the export control system is likely to require legislation, White House officials are taking a careful and deliberate approach to raising the idea, sources say.

Phase one of the plan is already underway and involves determining how to make immediate- and near-term changes to the export licensing system which could be done administratively. Some of these changes were proposed by the Bush administration in 2008 but never fully implemented. Among ideas reportedly being weighed are the harmonization of the nomenclature and structures of the U.S. Munitions List (USML) and Commerce Control List (CCL), so the USML would look more like the CCL. Phase two, which still awaits final decisions, would be more ambitious and would expand ongoing reviews and updating of the USML and CCL. A potential result, however, could be the merger of the two lists into one single list, development of a single export license application for items on both lists, establishment of a single entry portal for the submission of license applications, unification of export enforcement into a single office and consolidation of the three computer systems used by Commerce, State and Defense into one single information technology system. Sources say the goal is to implement phases one and two by autumn of 2010.

FCPA Investigations Continue to Target Major Firms

The international crackdown on the bribery of foreign government officials continued to roll along the week of April 12 with two more major U.S. corporations acknowledging that they are under investigation for possible violations of the Foreign Corrupt Practices Act (FCPA). Following press reports about investigations into their activities, both Avon and Hewlett-Packard (H-P) issued statements saying they are cooperating in these investigations.

> H-P said the alleged violations "occurred almost seven years ago, largely by employees no longer with HP." While the investigation was launched by German and Russian authorities, the U.S. Securities and Exchange Commission (SEC) is now also involved, according to press reports. "We are cooperating fully with the German and Russian authorities and will continue to conduct our own internal investigation," an H-P statement said.

Avon previously revealed its own internal investigation into possible FCPA violations in a filing with the SEC in February. On April 13, the company also confirmed that four of its executives had been placed on administrative leave pending an investigation into charges that they participated in the bribery of Chinese officials. It also said it was cooperating with the SEC and Justice. "We believe that these were the appropriate actions to take for a company that is committed to ethical behavior. As we've said before, the investigation is ongoing and as such no conclusions have been reached at this time," a company statement said.

In its SEC filing, Avon said it had engaged outside counsel to conduct an internal investigation and compliance reviews focused on compliance with the FCPA and related U.S. and foreign laws in China and additional countries. It said it had voluntarily disclosed the investigation to Justice and the SEC. "The internal investigation and compliance reviews, which are being conducted under the oversight of our Audit Committee, began in June 2008," it reported. "The internal investigation and compliance reviews, which started in China, are focused on reviewing certain expenses and books and records processes, including, but not limited to, travel, entertainment, gifts, and payments to third-party agents and others, in connection with our business dealings, directly or indirectly, with foreign governments and their employees," it told the SEC.

Hirschhorn Says Priorities are Efficiency, Education, Enforcement

Newly appointed BIS Under Secretary Eric Hirschhorn made an unscheduled visit to the April 13 meeting of the agency's Regulations and Procedures Advisory Committee and offered a short preview of his initial priorities (see **WTTL**, April 5, page 1). He also said he would have liked to have been part of the White House review of U.S. export controls, but conceded that the review could not be held up waiting for his confirmation. "This process is important to the president and the secretaries of the departments involved, and it had to go forward," he said. "I would have preferred to be here from the get-go, but I wasn't. I think a lot of people worked very hard on it, and I don't think it suffered from a lack of my brilliant input," he said.

The results of that review, however, will be part of one of his priorities, which is improving the efficiency of the export licensing process. "This is mostly what the export control review is trying to do, make it a system that controls what needs to be controlled but in a way that is expeditious," Hirschhorn told RAPTAC. "If you are entitled to a license, you ought to get it and know you're going to get it, and if you're not, you're not," he said. His second priority will be education. "There are many people, many businesses, especially smaller businesses, that are subject to the Export Administration Regulations and know little or nothing about them," he said. Hirschhorn said his third priority will be enforcement. "If we are going to have a rational system and a system that does what it ought to do and doesn't do a lot of stuff it doesn't need to do, it has to be obeyed," he said. "It has to be respected and there have to be consequences if people don't comply with them," Hirschhorn said. "I think there may be some stronger enforcement efforts made, if we are going to have a system that works," he added.

* * * Briefs * * *

TRADE FIGURES: U.S. goods exports in February of $98.5 billion showed strong17% rebound from February 2009, but goods imports of $149.8 billion have recuperated even better, jumping 23%. Services exports in February of $44.7 billion were up 9% from year ago, and services imports also rose 9% to $33 billion.

PLASTIC BAGS: On split 5-1 vote, with Commissioner Daniel Pearson voting negative, ITC made final determination April 15 that subsidized imports of polyethylene retail carriers bags from Vietnam and dumped imports from Vietnam, Indonesia and Taiwan are threatening to injure U.S. industry.

EXPORT LICENSES: BIS in April 5 Federal Register said it will no longer issue paper versions of most export and reexport licenses, notices of denial of license applications, notices of return of a license application without action, notices of results of classification requests, License Exception AGR notification results, and encryption review request results. All reports will be transmitted electronical effective May 5. Recordkeeping provisions of EAR also have been changed to reflect elimination of paper records.

EX-IM BANK: In first half of fiscal year 2010, which started Oct. 1, 2009, Export-Import Bank authorized $13.2 billion in financing, more than doubled $5.9 billion level from year ago.

CENSUS: Nick Orsini has been named chief of Census foreign trade division. His work at Census previously focused on preparation of monthly trade statistics and reports.

ACTA: Countries participating in latest talks April 12-16 on Anti-Counterfeiting Trade Agreement (ACTA) in Wellington, New Zealand, agreed to release draft text of agreement on April 21. "Based on the substantial progress achieved in ACTA negotiations this week, the United States and fellow ACTA participants jointly supported releasing a bracketed text in this particular negotiation. This text reflects our efforts to protect intellectual property and to safeguard consumers and businesses from pirated or potentially dangerous counterfeit products," said USTR Spokeswoman Nefeterius McPherson.

ISRAEL: Paper issued April 15 by Edward Gresser, director of trade and global markets project at Democratic Leadership Council, calls for updating of U.S.-Israel Free Trade Agreement, which marks its 25th anniversary this year. Compared to FTAs entered since 1985, Israel pact "looks archaic and a bit threadbare," he writes. Agreement needs to be update to address services, technical barriers to trade, intellectual property rights, he says. In addition, he urges expansion of Qualified Industrial Zones in Jordan and Egypt.

ZEROING: In divided ruling, binational NAFTA panel April 14 remanded to ITA administrative review of dumping order on stainless steel sheet and strip in coils from Mexico with instructions to recalculate dumping duties without zeroing non-dumped imports. **"Simply stated, the exclusion of positive value sales cannot be supported by the definition of aggregated amounts,"** ruled three of five panel members (their emphasis). Two other panelists, Americans Joseph Liebman and Cynthia Lichtenstein, dissented. They cited appellate court and CIT rulings that "have independently examined the text of the statute and found that Commerce was justified to interpret the dumping statute as it relates to the determination of dumping duties because the statute is ambiguous. Therefore, the permissive determination made by Commerce that it may apply zeroing is appro-priate and must be sustained when reasonable."

WASSENAAR: Exporters are complaining that Japan has already issued rules that became effective April 1 to implement results of Wassenaar Arrangement Plenary Meeting in December 2009. Changes will give Japanese exporters advantage over U.S. firms, especially where rules were liberalized for semiconductor manufacturing equipment, composite materials and encryption, they say.

TRANS-PACIFIC PARTNERSHIP AGREEMENT: USTR Ron Kirk asked ITC April 14 to conduct study of U.S. imports and exports with countries participating in TPP and "existence of other apparently anomalous levels of U.S. exports." He also wants ITC to report separately effects of existing FTAs with Chile, Singapore, and Australia.