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Option 4 Exporters Will Need to Reapply for Eligibility

Exporters that currently use Option 4 for the post-shipment filing of export documentation will have reapply for eligibility under changes the Census Bureau plans to propose to the Foreign Trade Regulations (FTR) in the fall, according to William Bostic Jr., chief of the bureau's foreign trade division. Census has been wrestling with Customs and Border Protection (CBP) for more than three year over Option 4, which CBP has wanted to eliminate entirely. "We are in serious discussions with Customs," Bostic told the Bureau of Industry and Security's (BIS) Regulations and Procedures Technical Advisory Committee (RAPTAC) June 9. The result of those discussions "will be reflected in a proposed rulemaking that will include some other changes to the Foreign Trade Regulations," he said.

> Census and CBP are working on new criteria for eligibility for Option 4, he reported. "So for anyone in Option 4, if they meet the criteria, then they will have to reapply," Bostic said. "We will not grandfather anyone in," he added.

Any FTR changes will need concurrence from State and the Department of Homeland Security. Some of the other changes to the rules will correct some "clerical errors," he said. The proposal also will call for eliminating the filing exemptions for household articles, used cars and carnets valued under $2,500. The new rules will also clarify some provisions in the rules.

Census has completed its phase-in period for AES and will now return to its "informed compliance" approach to enforcing the FTR, Bostic said. The agency will begin again to visit or contact firms that have high fatal errors rates in their AES filings. It also will refer some cases to CBP for enforcement action. The shift from paper Shipper's Export Declarations to electronic filing is nearly complete. In May, Census received only 14 paper SEDs, he reported.

WTO Calls Meeting to Discuss Putin's Accession Bombshell

World Trade Organization (WTO) officials have called for a special meeting June 17 to discuss a startling announcement June 9 by Russian Prime Minister Vladimir Putin who said Russia will withdraw its own request for accession to the WTO and reapply as part of a customs union with Belarus and Kazakhstan. The meeting will be chaired by Russian representatives to the WTO. Putin's announcement came as a surprise to most trade officials in Geneva, including Iceland Ambassador Stefan Johannesson, who chairs the WTO working group on Russia's accession. "We are puzzled," another ambassador told WTTL. Trade officials in Geneva are "a bit surprised in trying to understand exactly what the Russians are proposing," he said. The

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proposal also was a surprise to the WTO secretariat, Geneva trade officials, U.S., European and even Russian trade officials, sources reported. Russia has been in talks on WTO accession for 16 years and has become increasingly frustrated by the delay.

> Talks U.S. Trade Representative (USTR) Ron Kirk had June 4 in St. Petersburg with top Russian officials were described as tough but afterward Kirk indicated that the U.S. hopes Russia can join the WTO by the end of the year. WTO accession is expected to be among the top items on President Obama's agenda when he visits Moscow July 6-8 to meet with Russian President Medvedev.

After a meeting of the Eurasec Interstate Council and the Supreme Body of the Customs Union of Belarus, Kazakhstan and Russia, Putin told a press conference the three former Soviet Union states have agreed to withdraw their individual WTO membership applications and reapply together as a customs union. "The process of joining the WTO piecemeal [has become] a deterrent to the integration processes," Putin said, according to an English translations posted on his website. "In other words, we confirm that our countries' WTO membership remains our shared priority – no longer the individual membership of each country but of a customs union and a united customs territory," Putin said. The customs union is supposed to go into effect in 2010.

"We know very little" about Russia's decision to withdraw from the WTO accession talks, Johannesson told WTTL. The proposal would raise complex legal questions and would require a specific decision by WTO members, Johannesson said. Other trade diplomats said WTO rules would have to be revised to allow the three countries to join as a customs union at this stage in their unionization process. Under current WTO rules only countries or customs territories with complete autonomy in their external commercial relations can be members, one diplomat explained. The latter caters to cases like Hong Kong and Taiwan, he said.

The inclusion of Belarus in a new tri-party customs union application would be a particular problem because of U.S. and European Union (EU) objections to Belarus's membership due to its political repression. The U.S. has imposed trade sanctions on Belarus officials and companies. The Europeans have practically refused to talk to Belarus for quite a while, one diplomat noted. Russia may be coming into the final stretch of accession and may have decided to make one last demand because it received positive indications from the U.S. and EU about its WTO bid, one source suggested. Russia wants to unblock Belarus's accession, he said.

Advisors Move toward Deemed Export Methodology

The BIS Emerging Technology and Research Advisory Committee (ETRAC) June 11 voted to adopt as a "target model" a system that would produce a weighted-numerical score similar to credit agency credit-rating scores for determining whether a technology should be subject to deemed export licensing requirements. The model could become part of a more complicated methodology the committee is trying to develop in response to the assignment it has been given by BIS. The model consists of a flowchart of questions which would produce responses in the form of numbers ranging from negative to positive. For example, -5 to +5.

> At the end of the question tree, the numbers would be totaled. A total that is negative or low could indicate that the technology should be subject to deemed export controls. A positive or higher number would indicate that it should not be controlled. The details on what questions should be asked and what number ranges should be assigned to each question is still to be worked out. Also to be decided is what final score would put a technology in or out of control. In some cases, additional questions may be included to address specific technologies.

ETRAC members agreed that any model should be tested before adoption by both experienced government licensing officers and outside experts. A complete draft methodology isn't expected until October. The target model, which was proposed by ETRAC member George Burdock, president of Burdock Group, would be part of a methodology for determining whether certain technologies should be subject to deemed export rules. Initially, the model would be used to screen technologies already on the Commerce Control List (CCL), but it also could be used to examine emerging technologies not yet on the list to determine whether they should be controlled. The committee discussed several possible questions that could be included on the chart. Among these are: Is the technology capable of being turned into an adverse use? Is there foreign availability? What are the potential human and economic consequences of risk? Are effective countermeasures available? What effect will controls have on U.S. competitiveness? Is there evidence of foreign attempts to acquire the technology?

U.S. Ports Mull Complaint Against Canadian Subsidies

Officials of the ports of Los Angeles and Long Beach are investigating the possibility of asking USTR Ron Kirk to file a complaint against Canada under either NAFTA or WTO rules for what they claim are "actionable subsidies" to expand ports in Vancouver and Port Rupert in British Colombia. Long Beach Port representatives met June 8 with Assistant USTR for Congressional Affairs Daniel Sepulveda to discuss their complaint and to determine whether USTR officials agree the aid violates trade agreements and whether they would support action against Canada. The U.S. ports contend aid that Ottawa is giving to promote Canadian ports under the Asia-Pacific Gateway and Corridor Initiative (APGCI) is taking business away unfairly. They say the Canadian ports have taken away some 500,000 containers in the last year.

> Canada launched its marketing campaign for the APGCI June 15. "The Government of Canada has taken a number of important steps to enhance the country's transportation network," said Canadian International Trade Minister Stockwell Day. "This international ad campaign will help make businesses more aware of the advantages of moving their goods through our seaports and airports, and on our highways and railways," he said in a statement.

A draft memo on a potential WTO complaint prepared by the Long Beach Port staff claims the Canadian government has disbursed $591 million in initial funds for marketing, rail and terminal improvements. Given the specific nature of the investments, "the resulting competitive disadvantage born by U.S. West Coast Ports could constitute a violation under the WTO's current rules that warrant further exploration," it states. "Although this issue is not intended to be an exhaustive strategy to return diverted cargo to the Port of Long Beach, it is one method to help stem the competitive tide turning toward Canadian ports," the memo says.

The Canadians boast that the British Columbia ports can save ships from Asia 60 hours in sailing time to North America and that container dwell times at their terminals can be as little as 30 hours. They also say transit time to Chicago from Prince Rupert and Vancouver is only 100 hours, cutting four days in transit time compared to West Coast ports. The time to Chicago was cut last year by the Canadian purchase of a rail line into Chicago.

Buy American Rules Push Canadians toward Procurement Talks

The Buy American provisions in the multi-billion-dollar Recovery Act has prompted Canadian provinces and municipalities to reconsider their past opposition to bilateral and multilateral government procurement agreements. Stung by the lost sales Canadian firms are suffering due to the statute's restrictions, provincial and municipal officials in two recent resolutions have called for negotiations on new agreements to assure continued access to the U.S. market. The shift in attitude represents a "momentous decision by the provinces," said Jayson Myers, president of Canadian Manufacturers and Exporters.

Myers said his group has identified more than 250 Canadian companies that have lost business due to the Buy American rules or to overly cautious U.S. buyers who are afraid of losing the chance to get the stimulus funds. The change in attitude among the Canadian provinces and cities is in contrast to their strong opposition to being covered by the procurement provisions of NAFTA or the WTO Government Procurement Agreement. Because they chose not to be covered by these deals, language in the Recovery Act that requires the Buy American provisions to be applied in conformity with U.S. trade obligations doesn't apply to them.

> A resolution adopted June 9 by provincial premiers said: "Premiers believe the time has come for all orders of government in Canada and the U.S. to engage in a renewed era of collaboration to ensure open markets between the two countries. Therefore, they support open and inclusive discussion of all means, including the negotiation of a broad, reciprocal procurement liberalization agreement covering federal, provincial/territorial and state government measures, to secure mutually-beneficial market access and to exclude Canada from the negative effects of measures such as Buy American provisions."

A resolution by the Federation of Canadian Municipalities June 3 supported the right of Canadian cities to retaliate against the U.S. restrictions by imposing rules that limit procurement only to companies whose governments do not impose restrictions on Canadian goods. The resolution, however, suspended this clause "to allow for a negotiated resolution of this matter." In addition to calling for talks with the U.S., the resolutions also reflect Canadian interest in including procurement provisions in newly started talks between Canada and the EU. Canadian Trade Minister Stockwell Day and EU Trade Commissioner Catherine Ashton June 10 held the first round of talks on what is being called a Comprehensive Economic and Trade Agreement.

EU Set to Increase Pressure on U.S. over Gambling Dispute

The EU Commission's release June 10 of an internal report on U.S. enforcement of laws against Internet gambling may mark the restart of its dispute with the U.S. over gambling (see **WTTL**, March 30, page 3). The EU is also likely to use the report as leverage to obtain compensation from Washington as part of U.S. negotiations to withdraw sports betting from its list of concessions under the General Agreement on Trade in Services (GATS). The EU is ratcheting up pressure to deal with the trade barriers and threats to prosecute foreign violators, said Naotaka Matsukata, a senior policy advisor at the law firm of Alston and Bird, which consults for the online gaming industry. The report "supports everything" Antigua has said and done, said Mark Mendel, an attorney who represented Antigua in its WTO case against the U.S. Antigua's negotiations with the U.S. are due to restart soon.

* * * Briefs * * *

EXPORT ENFORCEMENT: Traian Bujduveanu was sentenced in Miami U.S. District Court June 11 to 35 months in prison followed by three years of supervised release for export of aircraft parts to Iran. He pleaded guilty to one count of conspiracy in April (see **WTTL**, April 13, page 4).

TRADE FIGURES: Decline in U.S. goods exports accelerated in April, with exports plummeting 26.6% from April 2008 to $$80 billion This was steepest monthly year-over-year decline in 2009. Imports of goods in April sank even more, dropping 34.6% from year ago to $120 billion.

ACTA: U.S., EU and other countries participating in talks on Anti-Counterfeiting Trade Agreement agreed June 12 to resume talks on pact to fight global counterfeiting and piracy. Talks were suspended after U.S. elections and waited for USTR review to determine whether Obama administration wanted to continue to participate. Negotiators plan to hold next round of talks in Morocco in July with goal of reaching agreement in 2010 (see **WTTL,** April 27, page 2).

MONGOLIA: Following talks June 10 between USTR General Counsel Timothy Reif and Assistant USTR Timothy Stratford with Mongolian Foreign Affairs Minister Sukhbaatar Batbold, U.S. and Mongolia agreed June 11 to launch negotiations on U.S.-Mongolia Transparency Agreement. Two countries already have Trade and Investment Framework Agreement. "The launch of the negotiations with Mongolia represents the first time that the United States has sought to conclude a stand-alone agreement on transparency," USTR statement noted. Previously, U.S. has only negotiated transparency commitments as part of broader agreements, such as Free Trade Agreements, it said.