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Enforcement of Census Regulations Will Be Low BIS Priority

The Bureau of Industry and Security (BIS) will limit its enforcement of the new Census Foreign Trade Regulations (FTR) and mandatory use of the Automated Export System (AES) to “the most egregious” violations, BIS Office of Export Enforcement Director Tom Madigan said Sept. 9. “I would like to put industry’s mind at ease,” he told the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC). He said OEE’s priorities remain dealing with weapons of mass destruction, terrorism and unauthorized military end uses. “We have a mandate to investigate violations of the EAR. We will be looking for referrals that are violations of the EAR,” he said, referring to the Export Administration Regulations (EAR).

“We are going to be looking for things that will complement what our mandate is,” Madigan said. “We will not be looking for the least common denominator. If there is a pattern of disregard for the FTR, we will look at those. If there are intentional violations. We really have just so many resources to attack our entire mission. We will be looking for the most egregious things,” he told RAPTAC.

Madigan said Census Foreign Trade Division officials have stressed that they “really wants to pursue informed compliance.” BIS will take the same approach. “On those referrals that we do get, that we do look at, we will be looking to do our own mode of outreach and awareness. Whether it’s a visit to individuals or if that doesn’t work, maybe warning letters,” he said. “I know there has been some concern about reacting on the first violation or second violation. I am here to tell you that we want to employ the reasonableness standard and frankly, we got to weigh everything we do and we have to look for those that compliment our mission and send the right message when we do pursue them,” Madigan explained.

Push Continues to Get Votes on Trade Pacts This Year

Despite the diminishing chances for votes this year on free trade agreements (FTAs) with Colombia, Panama and South Korea, the Bush administration, business groups, diplomats and Republican lawmakers continue to push Congress to take up the pacts. The lobbying, including a trade rally in front of the Capitol building Sept. 10, isn’t likely to move Democratic leaders in the House and Senate, as trade appears likely to resurface as a major issue in the presidential election campaign and Democratic demands remain unmet for a new Trade Adjustment Assistance (TAA) law and an additional stimulus package. U.S. Trade Representative Susan Schwab, who spoke at the rally, refused to answer questions on the status of administration talks with Senate Finance Committee Chairman Max Baucus (D-Mont.) on TAA. Another USTR

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official commenting on the TAA discussion told WTTL that “we aren't having anymore. We've been asking for everyone to come to the table for a year now to talk.” House Ways and Means Ranking minority Member Jim McCrery (R-La.) was more candid about TAA negotiations. TAA “is something we have all worked on, there is no reasons in my opinion that we could not have resolved that this year” as well as the FTAs, McCrery said. “As we get to the end of the year it's going to be tough to get all these things wrapped up. I think TAA is still something, perhaps, that we could tie up before the end of the year.” TAA “is tied to trade,” he admitted.

Korean Ambassador Lee Tae-Sik, who also spoke at the rally, told WTTL that South Korea “is in the process of negotiations” with the European Union (EU) on an FTA, and that if trends continue, “they will come first.” Lee said, “first come first serve.” The country that implements a deal first will benefit because “different conditions will be agreed upon, different terms and conditions, first come, first to be served.”

In his speech to the rally, Lee noted that “the U.S. used to be number one in the Korean market, now U.S. is our number three or number four.” If the U.S. wants to regain its market share, the Korean-U.S. FTA is the way, he said. “If you do not come to the Korean market, somebody else will come. At that time, don't blame us for closing our market since we had already opened our markets to you for goods and services,” he declared.

Panama and Colombia will step up their lobbying campaigns the week of Sept. 15. Panamanian President Martin Torrijos will be in Washington Sept. 16 to meet with members of Congress and Bush administration officials. Colombian President Alvaro Uribe will be here on Sept. 17 for a similar round of meetings. A vote on the Panamanian FTA had been blocked because the president of the Panamanian Assembly, Pedro Gonzalez-Pinzon, was under indictment in the U.S. for allegedly killing a U.S. soldier. With Gonzalez having left that post, the objections have ended and a vote on the Panama FTA probably could move in Congress. The White House, however, is insisting that a vote on the Colombian FTA must come first.

Wall Aims to Move Stuck Regulations in Next Four Months

BIS Assistant Secretary for Export Administration Christopher Wall is pushing to clear the decks of a number long-stalled regulatory initiatives in the four months remaining in the Bush administration and to see rules proposed or issue to implement the national security directive President Bush issued in January. Bush's National Security Presidential Directive (NSPD) “was a turning point in the administration of U.S. export controls” but “getting these things implemented is not an easy task,” Wall told RAPTAC Sept. 9. “I've likened it to pushing on a rope,” he said. Several regulations, including some that were being developed long before the NSPD was issued, have been stalled because of interagency disputes over policy despite the president's instruction. “My goal is to get these regulations published, as many as possible as quickly as possible,” said Wall, who was sworn into office July 2.

Wall has brought new energy to breaking the interagency logjam. “Some of it involves a vigorous attention to time lines,” he said. Noting that some rules have gone through three or four interagency rounds, Wall said: “It's time to wrap things up; it's time to stick to deadlines.” He gave RAPTAC an update on rules that he wants to see published in some form before he leaves office. Rules amending the Entity List and implementing mandatory use of SNAP-R have already been published. Many of the others will be issued soon, he said. These include:

- Regulations to implement a Protocol Additional to the U.S.-International Atomic Energy Agency (IAEA) Safeguards Agreement, which expands nuclear fuel-cycle safeguards.
- Part of staged update to current encryption rules (see story below).
- A revision of policy on “*de minimis*,” a subject Wall called “dear to my heart.”
- Changes to Interpretation No. 9 to mirror State's new rules on licensing jurisdiction for FAA-certified aviation products (see story below).
- Clarifications of crime control regulations. This will be two-stage process with some

technical changes made now, but a broader change possible later to look at countries, technologies and different levels of coverage.

- A proposal on Intra-Company Transfer rules is now back on track.

In addition, Wall said BIS is in talks with State to clarify licensing jurisdiction for thermal imaging products that are in U.S. Munitions List Category XII and on the Commerce Control List in Category 6. "There is a process underway," he said. "We are trying to bring clarity," he added. Wall conceded this issue "will take a little longer to resolve." He acknowledged Defense concerns about diversion that might hurt U.S. military personnel in Iraq and Afghanistan; but he also said, "Much of this technology is already available from foreign sources."

Wall also said he would try to get BIS to move more quickly to issue regulations to implement the annual changes adopted by the Wassenaar Arrangement. It often takes BIS nearly a year to issue these regulations even though changes made by the regime have interagency approval before they are adopted. "I would like to see that process telescoped," he said; adding, "That's a long-term kind of initiative."

BIS Will Stage Changes to Encryption Regulations

BIS intends to take a two-stage approach to updating current export controls on encryption-containing products, with the first changes addressing only minor technical issues, BIS Assistant Secretary for Export Administration Christopher Wall told the agency's Regulations and Procedures Technical Advisory Committee (RAPTAC) Sept. 9. This first stage is far less than industry has been seeking, including at a meeting with top BIS officials in August. "It's a small bit at the apple," one industry source told WTTL.

In a letter in July to export control and White House officials, 14 trade groups urged the Bush administration to make extensive changes to the current controls. At the August meeting with industry representatives, BIS officials reportedly said they needed more specifics on the availability of encryption products outside of controlled sources and advice on future trends in use of encryption.

"The regulations that will come out fairly soon, I hope, will be a first stage," Wall told the RAPTAC. "It will provide some simplification of the encryption rules in terms of reporting and other aspects, but it will not address all of the issues," he added. "It should not be seen in that context. It should be seen as a first step in the process of evolving discussion. There will be further work with industry groups, national security agencies, Defense Department and with all the other stakeholders involved in the regime to look at it from a broader holistic perspective in terms of how it actually functions," Wall said.

"There is a recognition that a different approach to regulating these products is important," he said. "What we are seeing is that everybody is using it. We need to address how in fact it is used; what is the nature of encryption; whether controls currently in place are the best way to regulate encryption; whether reporting requirements are doing the job; whether control levels are set at the right control levels," he said. "All these things need to be examined, but they do create some very difficult issues that will take some time," he added.

Aviation Industry Urges Further Clarification of Engine Controls

Regulation changes aimed at clarifying export licensing jurisdiction for aviation parts still need further work to identify how certain engine components will be treated, said industry representatives at the Sept. 11 meeting of the BIS Transportation and Related Equipment Technical Advisory Committee (TransTac). In particular, the new International Traffic in Arms Regulations (ITAR) rules on aviation products lack a workable definition of Full Authority Digital Engine Controls (FADEC) or clarity on new hot section measurement methods, TransTac members complained (see WTTL, Aug. 18, page 2). The Directorate of Defense Trade Controls

(DDTC) rejected arguments raised by makers of engine hot section components when it issued its final ITAR rule interpreting the application of Section 17(c) of the Export Administration Act (EAA) and expanded licensing requirements for hot-section parts, including FADEC.

In the final rule in the Aug. 14 Federal Register, DDTC designated engine hot sections and FADEC as “significant military equipment” because “these components and controls fulfill the definition of significant military equipment in 22 CFR 120.7 in that they have the ‘capacity for substantial military utility or capability.’” TransTac members said they want to see further clarity on what aspects of FADEC should be controlled and a distinction between military and commercial types of FADEC. Commercial applications can be very simple and are far different from FADECs found on advanced military aircraft, members argued. Now, however, both types are controlled equally as FADEC under ITAR.

One way these differences may be clarified is when BIS revises Interpretation No. 9 in the Export Administration Regulation (EAR) to provide new examples of aviation products that are covered by 17(c). As part of an agreement with DDTC to revise the EAR after State changed the ITAR, BIS is in the process of drafting a revision to Interpretation No. 9, BIS Assistant Secretary Christopher Wall told the RAPTAC Sept. 9. “It should provide a mirror image, a meshing of the statutes” but it also will explain licensing jurisdiction “a little more clearly,” Wall said. “I would be the last person to say that this will be the end of the story,” he added.

U.S. Support for Georgia Includes Trade Component

The Bush administration is making the expansion of U.S. trade with Georgia one of the key elements of its efforts to bolster the Black Sea nation in its struggle with Russia. Commerce Sept. 8 announced a wide range of initiatives it was undertaking to increase trade and investment between the two countries, with Commerce Secretary Carlos Gutierrez leading the call at a program sponsored by the U.S. Chamber of Commerce. “The Commerce Department is committed to working with the American and Georgian business communities, other U.S. government agencies, and Georgia’s government to support reconstruction and stabilization as well as expanded trade and investment,” a department fact sheet stated.

Commerce is organizing a trade mission to Georgia to be led by Deputy Secretary John Sullivan. It will hold a trade summit there during the mission, and the America-Georgia Business Council and the U.S. Chamber of Commerce based in Georgia will host a trade summit structured around the Commerce event.

Sean Timmins in the department’s Commercial Service Trade Missions office is organizing the mission. Timmins told WTTL the date for the mission has not been set but Oct. 20 is the target date. While “all sectors were welcome, certain sectors would be highlighted,” he said. The list of the sectors is being selected by group of “people on the ground in Georgia, who are familiar with the country and the marketplace.”

* * * Briefs * * *

OFAC: Agency in Sept. 8 Federal Register issued new Sanction Enforcement Guidelines.

TRADE FIGURES: U.S. goods exports in July surged 24% over same month in 2007 to \$120.8 billion, Commerce reported Sept. 11. Services exports were up 11.5% to \$47.4 billion. Goods imports gained 18.4% to \$195.7 billion, driven mostly by oil prices. Services import were up 8.4% to \$34.7 billion. Foreign tourism was big factor in trade growth. While number of foreign tourists increased 11% in first half of 2008 compared to 2007, their spending jumped 24% to \$12.2 billion, Commerce reported.

AES: Census will soon issue new Foreign Trade Letter advising exporters that “shipment reference number” entered on AES must be “unique forever,” Census official told RAPTAC.