

Census to Take “Informed Compliance” Approach to AES

Between July 2, when its new Foreign Trade Regulations (FTR) become effective, and Oct. 1 when enforcement of the rules formally begins, the Census Bureau “will be taking an informed compliance approach” to enforcement, said William Bostic Jr., director of the bureau’s foreign trade division, June 10. “Customs will not penalize exporters on our new regulations” during that period. Starting on Oct. 1, however, “if a paper SED [Shipper’s Export Declaration] is submitted, it will be in violation...and subject to penalties,” he warned.

Census has delegated enforcement powers for the new regulations to the Bureau of Industry and Security (BIS), Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). “The Census Bureau will make referrals to the [BIS] Office of Export Enforcement, and we will only do so after an informed compliance approach,” Bostic said. He said Census will limited its compliance review program, which assesses how exporters are complying with Automated Export System (AES) requirements, for the next 12 months.

Census will work with companies with very low compliance rates to help them get into compliance, Bostic said. “If they are taking corrective action and their compliance rate is moving forward and closer to the 95% rate, we will not make a referral to the Office of Export Enforcement,” he said. If no action seems to be taking place, it will send BIS the case, he said.

When Census refers a case to OEE, it will provide OEE with all the information about the company. “We will probably also make a suggestion to the Office of Export Enforcement to look at this company as it relates to the EAR [Export Administration Regulations],” Bostic noted. “If we feel the company is ignoring our regulations, then it is more than likely also ignoring the EAR,” he added. Census also will give OEE copies of all voluntary self disclosures it receives from exporters. The disclosure information will be shared to determine if any other agency has already discovered the violation. “If an agency has identified the problem first, then your voluntary disclosure is kind of null and void,” Bostic declared.

Nath Says U.S. Already Getting Increased Access to India

India’s Commerce and Industry Minister Kamal Nath June 12 dismissed U.S. demands for greater access to the Indian industrial market in the Doha Round negotiations, arguing that U.S. exports to India are already growing faster than to any other market in the world. “If India’s imports are going up 74% from the United States, it’s not that there is no market access,” he



told WTTL after speaking to the U.S.-India Business Council annual meeting in Washington. "That doesn't happen without market access. So there is market access," he asserted.

Nath didn't say where the 74% figure came from, but Census figures released June 10 on U.S. trade in April show U.S. goods and agriculture exports to India increasing 46% in the first four months of 2008 compared to the same period a year ago. Exports of advanced technology products grew 45% during that period. From January to April, total U.S. exports to India rose to \$5.3 billion.

Nath said India is willing to negotiate on the basis of the text that Canadian Ambassador Don Stephenson offered in the negotiations on non-agriculture market access (NAMA). "We are working on that," Nath told WTTL. "Not everything is acceptable, but everything is not rejected either," he said. "It's the respect for sensitivities that we have to see," Nath added. "Like the U.S. has great sensitivities on subsidies, we have sensitivities on livelihood and subsistence," he said. "There are two different kinds of sensitivity. One kind of sensitivity relates to those whose incomes are over one million dollars or half a million dollars; whereas our sensitivities are related to people who have less than one dollar a day," Nath stated.

Although the concerns he identified have been raised before, Nath said he was still optimistic about the chances for concluding the Doha Round. "I think there is a greater determination," he said. "There has been very active engagement over the last one week. Things are moving and I think we are going to be inching forward," he observed (see story below).

Countries Must Decide What Doha Deal Is Worth, Allgeier Says

With Doha Round negotiations entering a new phase of intensity, Deputy U.S. Trade Representative (USTR) Peter Allgeier June 13 said World Trade Organization (WTO) members need to decide what the trade-offs in a final deal are worth to them. Brazil, Argentina, South Africa and other advanced developing countries have to cut tariffs on industrial goods in exchange for the U.S. making "major contributions in terms of reducing our agriculture subsidies," he said.

"They have to make a political calculation now," Allgeier said at an American International Club luncheon in Geneva. "What they see emerging on the table in agriculture. How much is it worth to them? We have an idea of how much we think it should be worth, because we are already contemplating paying a price in our agricultural policies...It is basically coming down now to some very basic political decisions," he said. "We're entering a very critical point over the next several weeks," he noted. "That will determine in large measure whether we are able to complete these negotiations by the end of this year," he added.

Senior officials from about a dozen countries started more detailed talks the week of June 9 at sessions held at the U.S. mission in Geneva (see **WTTL**, June 9, page 1). They have focused initially on non-agriculture market access (NAMA), but will extend into agriculture issues. Their goal is to set the stage for a ministerial-level meeting probably in July that will try to find a compromise among the key sectors in the talks. The senior officials are expected to continue meeting during the week of June 16, with two meetings on NAMA. Separately, the committee on agriculture negotiations is expected to meet again at mid-week.

After seven years of talks on "modalities" or formulas for cutting tariffs, negotiators have decided to do some technical analysis of the various NAMA proposals during the next two weeks to see how the modalities would actually cut specific industrial tariffs and how that would balance with cuts in farm aid. Groups will analyze technical aspects of the NAMA text, including sectoral initiatives, non-tariff barriers, and a U.S./EU proposal on non-concentration. The goal is to provide developing countries with calculations showing how flexibilities and tariff cuts would work in practice for a particular industry. Officials agreed June 13 to try to update the NAMA text in the next two weeks with the results of the analysis. In addition, the request of Mercosur, the South American trade block, for special treatment for customs unions

will be analyzed to better understand its implications, one source said. The U.S. and Europe keep raising issues about the proposal no matter how much explanation is offered, said a high-ranking Latin American trade diplomat. He complained that the U.S. and EU know pretty well what the impact of the Mercosur exception will be. It's just a way to keep the Mercosur common external tariff, he said. It mainly will allow Brazil and Argentina to have more textiles trade, he asserted. "We don't think they are being very, very reasonable here," he argued. It is clearly tactical because they have no interests exporting textiles to Mercosur, he added.

Geographical Indications Could Be Doha Stumbling Block

One of the back burner issues in the Doha Round, the protection of geographical indications (GI), has raised its head again and could become another roadblock to conclusion of the round. GI protection is a key demand of the European Union (EU) and Switzerland, which see the preservation of the names of their wines, spirits and cheese as a crucial payback for their acceptance of farm trade reforms. The pressure that is rising to resolve the deep divisions over GI rules is seen in a paper that the chairman of the GI negotiations, Manzoor Ahmad, Pakistan's ambassador to the WTO, circulated June 9 on the state of play in talks on the issue.

GI protection for wines and spirits is increasingly linked to the Agreement on Trade Related Intellectual Property (TRIPs) and the Convention on Biodiversity (CBD), one Latin American trade diplomat told WTTL. Supporters of stronger GI protection want to create a register of names that could not be applied to any products except those that come from the geographical area that is registered – Burgundy, for example. Certain countries, such as India, favor extending GI coverage to other products and including the CBD in a final deal, he said. India has an interest in extending GI rules to products such as rice and tea, he noted.

GI negotiations on wine and spirits have a number of difficulties. Countries remain deadlocked over the legal effect of new rules and participation, according to the chairman's paper. While Europeans would like a system that allows a notification to apply widely, there is a conflict with the territorial basis of intellectual property, one diplomat explained. Because each country retains the ability to accept or reject something like this, it raises major issues, he said. There is more common ground on notification and other procedural issues, he added.

A joint paper issued by the U.S., Australia, New Zealand, Canada, Chile, Argentina and others opposes mandatory participation in a GI registration for wines and spirits. The group is called the New World Group because European winemakers who migrated to the Americas and Australia took their wine names with them. Argentina is radically against the register, one Latin American trade diplomat said. Brazil "doesn't like it but could live with something," although not everything the Europeans are asking for, he noted. Brazil may be more flexible because it wants to include the CBD in an agreement, he said. It wants to include prior informed consent and disclosure in patent applications in a deal, he explained. Another group claiming more than 100 countries supports talks on all three issues. The New World group opposes all three.

A paper floated by World Trade Organization (WTO) Director General Pascal Lamy on GI extension and the CBD could set the stage for proponents to ask ministers at their expected meeting in July to provide guidance on the way forward, suggested a developing country ambassador. Resolution of GI, TRIPs and the CBD is not expected in the next few weeks, the Latin American trade diplomat said. "What we expect is a commitment to negotiate," he said.

Qing Li Pleads Guilty to Conspiracy to Export Parts to China

Qing Li, a Chinese national who is a permanent alien resident in the U.S., pleaded guilty June 9 in San Diego U.S. District Court to conspiracy to export piezoresistive accelerometers to China without a license from the State Department. As an item on the U.S. Munitions List, a license would not have been issued. Li had attempted to have her indictment dismissed based

on her claim that the Arms Export Control Act is unconstitutionally vague. The federal judge in the case rejected her claim (see **WTTL**, April 7, page 2). In October 2007, Li was indicted on charges of attempting to export Endevco accelerometers to China without a license. Agents from ICE and the Defense Criminal Investigative Service arrested Li at New York's JFK International Airport as she was checking in to board a flight to China.

Li, 39, who was living in Stamford, Conn., was caught in a sting operation trying to buy and export the accelerometers to a customer described in court papers as a "special" scientific agency in China. Li and her co-conspirator used e-mail and phone calls to negotiate the exports with an undercover ICE agent in San Diego, who repeatedly stressed the illegality of the transaction, a Justice statement noted.

"Li and her co-conspirator urged the undercover agent to deliver the accelerometers directly to China, advising the undercover agent that if the accelerometers tested properly, large orders would follow," Justice said. According to court papers, during a three-way telephone call, when the undercover agent advised Li and her co-conspirator that the accelerometers are used to measure massive explosions, and even nuclear explosions, Li's co-conspirator stated that "our client knows exactly what this thing is used for," the department noted.

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TRADE FIGURES: Export boom continued in April, with goods exports soaring 20% to \$109.6 billion compared to last April, Commerce reported. Services exports jumped 17% to \$46 billion. Goods imports were up 14% to \$182.5 billion due mostly to oil imports. Services imports edged up 10% to \$33.9 billion.

SUDAN: In June 12 Federal Register, Defense, GSA and NASA amended acquisition regulations to implement 2007 Sudan sanctions legislation. Under amended rules, "If the offeror cannot affirmatively make the certification that it does not conduct restricted business operations in Sudan, then it is not allowed to submit an offer." Separately, OFAC June 5 posted notice extending temporary licenses for Sudan. "Because of the large number of registrations and licenses that were issued without expiration dates, OFAC has determined that registrants or licensees that mail or fax their renewal applications by June 30, 2008, will be provisionally authorized to conduct the same activities as permitted under the registrations or licenses they have applied to renew, until November 30, 2008, or the date OFAC responds to their applications, whichever date is sooner," it said.

CUBA: BIS revised EAR in June 13 Federal Register to amend License Exception Gift Parcels and Humanitarian Donations (GFT) to permit mobile phones (and related software, batteries, memory cards, chargers, and other accessories for mobile phones) to be included in such gift parcels to Cuba. Rule also raises value limit on such gift parcels from \$200 to \$400. President Bush May 21 promised change in policy, and Cuban government has said it will permit Cubans to acquire and use mobile phones.

IEEPA: OFAC in June 10 Federal Register amended regulations to implement higher \$250,000 per violation fines effective June 10. "In particular, the amended regulations cross-reference IEEPA for the maximum civil penalty amount rather than specify such amount in the regulations themselves," OFAC said.

BIOFUELS: EU June 13 launched countervailing duty and antidumping cases on imports of biofuels from U.S. "With regard to the anti-subsidy complaint, the complainant has provided sufficient evidence of subsidies to the biodiesel sector in the USA," EU said. "These subsidies would include federal excise and income tax credits as well as a federal programme of grants to finance increased production capacity. Various subsidy programmes would also exist at state level. In regard to the anti-dumping complaint, the complainant has provided sufficient evidence of dumping of biodiesel on the EU market," it added.

BYRD AMENDMENT: After long litigation and appeals, CIT Judge Donald Pogue June 10 issued order (Slip Op. 08-65) barring Customs from distributing Byrd Amendment money from duties collected on imports of red wheat from Canada, but dismissing claims for relief from Canadian softwood lumber industry. "ORDERED, ADJUDGED and DECREED that Defendant W. Ralph Basham, Commissioner of the United States Bureau of Customs and Border Protection, his employees, officers, agents, attorneys, and successors in office are **permanently enjoined**, as of July 14, 2006 from making any continued dumping and subsidy offsets, payments or distributions, to affected domestic producers, as defined by 19 U.S.C. Section 1675c (2005), to the extent they derive from duties assessed pursuant to countervailing duty orders, antidumping duty orders, or findings under the Antidumping Act of 1921, upon hard red spring wheat from Canada imported into the United States," Pogue ordered.