

Customs Law Advisory

November 30, 2007

Homeland Security Department Calls for Tougher CBP Enforcement on Exports

The Department of Homeland Security, Office of the Inspector General (“OIG”) recently issued a public summary¹ of a classified audit report on the export compliance enforcement activities of Customs and Border Protection (“CBP”). The report found that CBP does not consistently review shipments for export compliance. CBP has indicated its agreement with the report and the agency’s intention to take action. Accordingly, exporters should expect CBP to increase scrutiny of export shipments and paperwork.

The OIG’s report is the last in a series of eight such reviews, with the overall intent of assessing US export control policies and practices, especially regarding the transfer of militarily sensitive technology to countries and persons of concern. This report focused on CBP’s role in the export process, which is to enforce the regulations of other agencies (such as the Bureau of Industry and Security (“BIS”) and the Directorate of Defense Trade Controls (“DDTC”), and other export-related agencies) through inspection of paperwork for outbound cargo and the detention of merchandise and initiation of enforcement actions where a violation is suspected. CBP is responsible for ensuring that export declarations are complete, accurate, and supported by sufficient company records, as required by these other agencies.

The OIG’s report found that CBP does “not consistently target [...] and inspect [...]” export shipments and, as a result, “shipments could be exported that violate export laws and regulations.” The report stated that since September 11, 2001, CBP has reallocated resources devoted to export targeting and inspection, resulting in insufficient resources for these functions. The OIG also noted that CBP lacks the information necessary to effectively monitor the export program and does not have performance measures to evaluate results. The available public summary does not include the specific recommendations made in the OIG report. However, the summary notes that CBP largely has already agreed to the recommendations and is “implementing corrective actions.” The summary also cited an open recommendation from a prior audit report,² that CBP should “evaluate the Outbound Program, including current resources and staffing needs.”

The public summary of the OIG’s report suggests that CBP will increase scrutiny of export shipments and declarations in order to respond to the recommendations in the OIG’s report. While this report was part of a series focused on military products, the concerns raised are not new and apply to CBP’s enforcement measures regarding all exports. It can be expected that CBP will increase the number of inspection, detention and enforcement actions in order to demonstrate action even following post-September 11 resource reallocations. Indeed, CBP may also use existing systems and personnel to increase export scrutiny. To the extent that such resources come from established CBP import enforcement programs, they may focus on the traditional import data points such as classification, value and country of origin to assess the accuracy of export paperwork. As with imports, it is the responsibility of the exporter to correctly and completely declare this data and to possess records to support the reasonable accuracy of the information declared.

Any increased export enforcement by CBP is especially important in light of the recent increase³ in civil and criminal penalties that can be imposed for violations of export controls, including civil fines increased from \$50,000 to \$250,000 or twice the value of the transaction at issue, whichever is greater. Such fines apply per violation and shipments repeating the same error can be considered multiple, separate violations, depending on the circumstances. In light of the additional attention likely from CBP, exporters should continue to vigorously pursue their export obligations and to implement the necessary measures to demonstrate compliance.

If you have any questions regarding export declarations, please do not hesitate to contact Greg McCue at 202-429-6421 or gmccue@steptoe.com.

Import Safety Webinar—Product Recalls: Effectively Managing the Process

Date: January 10, 2008

Time: 1:00 pm EST

Join [Tom Barba](#), [Sandy Chamblee](#), and [Jennifer Quinn-Barabanov](#) from Steptoe & Johnson LLP and Elisha Lawrence, General Counsel, Alltrade Tools, as they discuss the steps companies should take to determine if they face substantial product hazards and negotiate corrective action with the CPSC. The session will also address how to maximize recall effectiveness and minimize the threat of follow-on consumer litigation should a recall become necessary. Registration is free and online - [click here](#) for more information.

[1] Office of the Inspector General, *Audit of CBP Export Control Activities (Unclassified Summary, OIG-07-76*, Department of Homeland Security, September 2007, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-76_Sep07.pdf.

[2] Office of the Inspector General, *Review of Controls Over the Export of Chemical and Biological Commodities, OIG-05-21*, Department of Homeland Security, June 2005, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIGr_05-21_Jun05.pdf.

[3] See our advisories of October 2, 2007 at <http://www.step toe.com/publications-4884.html> and October 16, 2007 at <http://www.step toe.com/publications-4909.html>.

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