



EXPORT CONTROL DEVELOPMENTS

BIS Seeks to Harmonize Definitions under Multiple Export Control Regulations in U.S.

In April 2010, Defense Secretary Robert Gates announced that the Obama Administration plans to reform the U.S. export system with four key principles: Single Export Control List, Single Licensing Agency, Single Enforcement Coordination Agency, and Single IT System. The current system is based on three different regulations, namely the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and the sanctions regulations administered by the Office of Foreign Asset Control ("OFAC"). These regulations have different interpretations and definitions even for identical words, which make them overly complicated and difficult for businesses to comply with. It has been said that to combine EAR, ITAR and sanctions regulations without changes to any of them is nearly impossible as these regulations are based on different structures, philosophies, and were written in different times for different purposes.

In early June, Mr. Kevin Wolf, Assistant Secretary for Export Administration in Commerce Department of Bureau of Industry and Security ("BIS") formally requested members of the Regulations and Procedures Technical Advisory Committee ("RPTAC") to create a common definition for the core concepts and terms in the three primary sets of export control regulations. He asked the RPTAC to provide BIS with recommendations on how to define 16 sets of terms and concepts used in these regulations. The RPTAC has the responsibility of advising and assisting the Secretary of Commerce and other Federal agencies with respect to actions designed to carry out policies.

Among the 16 sets, Mr. Wolf highlighted the following five areas as particularly complicated and challenging:

- i. "specially designed" from the EAR and the "specifically designed or modified" as used in the ITAR;
- ii. "services";
- iii. "fundamental research";
- iv. "deemed export" and "deemed re-export"; and

Strategic Business Planning

Supply Chain Planning

Customs Advisory

Export Control

Tax & Transfer Pricing

WTO & FTA Advisory

Labor & Employment

Anti-Illicit Trade

Cambodia

China

India

Indonesia

Japan

Lao PDR

Malaysia

Philippines

Singapore

South Korea

Taiwan

Thailand

Vietnam

www.bryancavetrade.com

- v. The different ways of classifying end items with controlled parts and components. (for example, the “see-through rule” applies for ITAR items but BIS classifies an end item without looking at the classification status of parts and components)

Common definitions for these terms are essential to achieve the Obama Administration’s goals under the export control reform initiative. It is also helpful to exporters by making it clearer and easier to comply with the export control regulations. Manufacturer and exporters should monitor the relevant developments closely to assess and evaluate the impact to the classification of their items.

Mr. Kevin Wolf was sworn in as Assistant Secretary of Commerce for Export Administration on February 19, 2010. Prior to his joining the Obama Administration, he was a partner of international law firm, Bryan Cave LLP, in Washington, D.C.



BRYAN CAVE INTERNATIONAL TRADE

Bryan Cave International Trade ("BCIT") is a strategic operations consultancy that provides clients with the strategic and operational advice they need to anticipate, react to and benefit from the diverse and constantly evolving regulatory and competitive landscape of the global business environment. Whether clients are planning their entry into a specific market or exploring options for locating various business functions, whether they want to take a proactive approach towards ensuring compliance with customs and regulatory requirements or seek to defend and resolve a matter with the authorities, whether they want to capitalize on cost-savings opportunities under trade agreements or design effective countermeasures against illicit trade, Bryan Cave International Trade is dedicated to assisting clients achieve their goals.

BCIT operates in Bangkok, Beijing, Jakarta, Kuala Lumpur, Manila, Shanghai, Singapore and Tokyo, and covers Australia, Cambodia, India, Korea, New Zealand, Taiwan, Vietnam, and other markets in the region. Our consultants include former senior customs and trade officials, and customs, tax and trade practitioners with years of experience and broad contacts in their respective countries and in the region. These specialists have years of experience advising clients on customs compliance audit, including classification, valuation, transfer pricing, duty drawback, country of origin, free trade agreements and other preferential tariff schemes, as well as other international trade subjects, such as export control and anti-illicit trade.

BCIT is a subsidiary of the law firm Bryan Cave LLP, an international law firm headquartered in the United States. Benefiting from the Firm's "one firm" philosophy which has eliminated internal economic and geographic boundaries, Bryan Cave International Trade also brings to our clients the extensive expertise and resources of Bryan Cave lawyers and professional staff worldwide.

If you have any comments or questions with regard to this Bulletin or any matters discussed herein, or if you are interested in finding out more about BCIT's services, please contact any of the persons listed below:

Cecil Leong
cecil.leong@bryancavetrade.com
+65 6403 6388

Wong Chian Voen
chianvoen.wong@bryancavetrade.com
+86 21 2308 3000

Stephanie Wong
stephanie.wong@bryancavetrade.com
+65 6403 6391

Tatsuya Kanemitsu
tatsuya.kanemitsu@bryancavetrade.com
+813 5532 7413

Ashley Yean
ashley.yean@bryancavetrade.com
+65 6403 6385

