



TFTEA – Export Focus

MSK Client Alert by [Susan Kohn Ross](#)

In earlier editions of our Alert, we first summarized the new law ([see here](#)), then addressed the intellectual property rights changes it contained ([see here](#)), and most recently covered the organizational structure ([see here](#)). Now, we turn to the export focused provisions in the Trade Facilitation and Trade Enforcement Act (“TFTEA”). Mainly those export provisions have to do with information collection for targeting. However, new initiatives for promoting U.S. exports are let out in detail in TFTEA.

As most international traders are aware, the U.S. government has been developing a new computer, the Automated Commercial Environment (“ACE”). ACE not only replaces the current Customs and Border Protection (“CBP”) system, but is designed to reengineer CBP’s operational processes; develop a new technology infrastructure; and integrate commercial, enforcement and administrative operations. ACE is also intended to provide a platform whereby importers and exporters will be able to provide electronic data about their shipments through one portal, with the data filed being automatically referred to the relevant federal agencies with jurisdiction over the specific shipment. The idea is those agencies will give a release or hold message quite quickly, and then the goods move on their way. This process is often referred to as creating a “single window”, with the International Trade Data System being the portal used to funnel the data to the various agencies. While providing a single point of data exchange between the government and international traders, ultimately the idea is to streamline the process for goods entering and leaving the country. Government-wide utilization of this new ACE process by all affected federal government entities is mandated to occur no later than December 31, 2016, by Executive Order 13659, signed by the President on February 19, 2014. By then, CBP, as well as 47 Partner Government Agencies (PGAs), are scheduled to be on-board. CBP has done a good job posting up-to-date information about ACE implementation at <http://www.cbp.gov/trade/automated>.

Exporters have long filed their data electronically with the Bureau of Census (“Census”) through the Automated Export System (“AES”). Now, Census and CBP are migrating the AESDirect system into the ACE single window platform. The transition should be complete by April 30, 2016.

The TFTEA requires this new system must be used for all data and relevant documentation, exclusive of applications for permits, licenses or certifications, needed for the clearance of cargo for export by December 31, 2016. The CBP National Targeting Center, together with the Office of Trade, will be using this powerful data bank to identify possible violations of U.S. law, in particular those involving the trade priority issues on which CBP focuses: agriculture, antidumping and countervailing duties, import safety, intellectual property rights, revenue, textiles and wearing apparel, and trade agreements and preference programs.

When it comes to exports, we can expect Census, State, Commerce, Defense and the other export regulatory agencies to focus on goods which require licenses and are shipped without benefit of those licenses, are otherwise misdescribed, and especially those misdescribed goods which seek to evade U.S. export controls or economic sanctions.

With regard to exports, we also anticipate a higher level of watchfulness regarding violations of intellectual property rights (IPR). The National Intellectual Property Rights Coordination Center is



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mandated to coordinate with CBP to prevent the importation and exportation of merchandise which infringes IPR. This focus goes hand-in-hand with CBP's attention to protect the Made in USA label.

Illicitly trafficked cultural property, archaeological or ethnological materials, and fish, wildlife and plants being exported will also be monitored and, again, the improved targeting capabilities of ACE will likely increase the number of export inspections, as potential violations are suspected or identified.

CBP also hopes to finally resolve the troublesome in-bond system. Data in ACE will enable CBP to monitor in-bond moves and enhance the ability of the agency to verify that each transaction reaches its final destination in the U.S. or is re-exported in a timely manner.

Regarding export promotion, a new State Trade Expansion Program (STEP) has been established through passage of the TFTEA. Grants will be made available to states to assist eligible small businesses as to:

- A. participation in foreign trade missions;
- B. subscription to services provided by the Department of Commerce;
- C. payment of website fees;
- D. design of marketing media;
- E. trade show exhibition;
- F. reverse trade missions;
- G. procurement of consultancy services (after consultation with the Department of Commerce to avoid duplication); or
- H. any other initiative determined appropriate by the Associate Administrator for International Trade of the Small Business Administration ("SBA").

When states apply for these STEP grants, they must submit their plans for a program. Priority status may be given to state programs that focus on eligible small business concerns as part of a trade expansion program; and demonstrate intent to promote trade expansion by socially and economically disadvantaged small business concerns; small business concerns owned or controlled by women; and rural small business concerns. A program that promotes trade facilitation from a state that is not one of the 10 states with the highest percentage of eligible small business concerns engaged in international trade (as determined by the most recent data from the Department of Commerce) may also receive priority status, as well as those that include:

- I. activities which have resulted in the highest return on investment based on the most recent year; and
- II. the adoption of shared best practices included in the annual report of the Administration.

We encourage eligible small business concerns to monitor the Small Business Administration ("SBA") website for additional information. Find out whether your state is submitting an application and how you can become involved in the process. Contact your local District Export Council – www.districtexportcouncil.org - and/or U.S. Dept. of Commerce, U.S. Export Assistance Center - <http://www.export.gov/eac/> - for additional details.

There is to be a pilot program within six (6) months of enactment. The SBA Inspector General must submit a report to the Senate Committee on Small Business and Entrepreneurship and the House



Committee on Small Business detailing the use of amounts made available under the STEP grants under section 1207 of the Small Business Jobs Act of 2010 (15 U.S.C. 649b note).

Further seeking to assist small businesses to export, Subtitle C of the Export Enhancement Act of 1988 (15 U.S.C. 4721 et seq.) is amended by inserting after section 2313 the following:

“SEC. 2313A. STATE AND FEDERAL EXPORT PROMOTION COORDINATION WORKING GROUP.

“(a) STATEMENT OF POLICY.—It is the policy of the United States to promote exports as an opportunity for small businesses. In exercising their powers and functions in order to advance that policy, all Federal agencies shall work constructively with State and local agencies engaged in export promotion and export financing activities.

“(b) ESTABLISHMENT.—The President shall establish a State and Federal Export Promotion Coordination Working Group (in this section referred to as the ‘Working Group’) as a subcommittee referred to as the ‘TPCC’).

“(c) PURPOSES.—The purposes of the Working Group are—

“(1) to identify issues related to the coordination of Federal resources relating to export promotion and export financing with such resources provided by State and local governments;

“(2) to identify ways to improve coordination with respect to export promotion and export financing activities through the strategic plan developed under section 2312(c);

“(3) to develop a strategy for improving coordination of Federal and State resources relating to export promotion and export financing, including methods to eliminate duplication of effort and overlapping functions; and

“(4) to develop a strategic plan for considering and implementing the suggestions of the Working Group as part of the strategic plan developed under section 2312(c).

“(d) MEMBERSHIP.—The Secretary of Commerce shall select the members of the Working Group, who shall include—

“(1) representatives from State trade agencies representing regionally diverse areas; and

“(2) representatives of the departments and agencies that are represented on the TPCC, who are designated by the heads of their respective departments or agencies to advise the head on ways of promoting the exportation of United States goods and services.”.

These efforts indicate a renewed and enhanced focus on promoting exports from the U.S., particularly exports of merchandise from small business entities. Of course, the devil is in the details! Everything depends on how the program is rolled out and how the funds are actually allocated. If you think STEP could help your company, keep an eye out for more information. The SBA publishes STEP information at <https://www.sba.gov/content/state-trade-and-export-promotion-step-pilot-grant-initiative-cfda-59061-1>. This link also provides details about the administration of STEP in each state.

Export.gov will eventually be improved so as to become a comprehensive resource for information about exporting goods from the United States. Small business concerns that are exporters, the President’s Export Council, state agencies with responsibility for export promotion or export financing, district export councils, and trade associations will be consulted before recommendations for improvement are drawn up.



Export.gov will also make available information about resources relating to export promotion and export financing in each state, together with information about state agencies with responsibility for export promotion or export financing, district export councils (private sector individuals appointed by the Secretary of Commerce to 59 regional councils with the goal of assisting Commerce to enhance American exports) and trade associations located in the state. If this works out as advertised, it will be a valuable assistance to exporters, particularly small business entities. Obtaining this type of information can be very difficult and time consuming now no matter how good is the freight forwarder with whom you partner.

While waiting for these various options to roll-out, American exporters should keep in mind with the use of ACE, the risk of making a mistake in the declaration of your product at time of export is being increased. Are you ready for heightened curiosity by the federal government about your shipments?