EIB World Trade Headlines

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March 2011 - Vol 3 Issue 5

-NOTICE OF SUSPENSION FOR LIBYA- STATE DEPARTMENT ITAR RESTRICTIONS

Effective immediately, all export licenses issued pursuant to the authorities of the Arms Export Control Act and the International Traffic in Arms Regulations (22 CFR 120-130) are hereby suspended until further notice. No further exports may be made against them. These actions have been entered into the AES database and forwarded to U.S. Customs and Border Protection. Additionally, no exemptions may be utilized for exports to Libya. Further guidance related to exports to Libya will be promulgated via a Federal Register Notice. The DDTC Response Team provides responses to the full range of defense trade inquiries, and can significantly facilitate your defense trade solutions. You can reach the Response Team by telephone at (202) 663-1282.

Breaking News Alert

U.S. Freezes $30 Billion in Libyan Government Assets (February 28, 2011 2:34:17 pm)

The U.S. Treasury Department announced Monday that it has frozen at least $30 billion in Libyan government assets under U.S. jurisdiction. "This is the largest blocking under any sanctions program ever," said David Cohen, the department's acting undersecretary for terrorism and financial intelligence. The announcement comes as U.S. and European governments tighten sanctions against the government of Libyan leader Moammar Gaddafi.

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FDA Issues Report on Improving Transparency with Trade - Including Imports and Filers

The Food and Drug Administration (FDA) announced the availability of a report in January 2011 entitled: " FDA Transparency Initiative: Improving Transparency to Regulated Industry." The report is in response to a request for input from regulated companies. In its report, FDA outlines 19 action items and five draft proposals to improve transparency to regulated industry. Five action items focus on improving transparency to the importing community:

1. FDA will work with U.S. Customs and Border Protection (CBP) to explore developing a process by which brokers and filers can correct inadvertent data errors submitted about imported products and FDA should post that process online.
2. As part of the efforts to implement the forthcoming Strategic Import Plan, FDA will develop and execute a project to promote more uniform processes and procedures across districts, when appropriate. This project will be tracked on FDA-TRACK, the FDA's agency-wide performance management system.
3. FDA will aim to respond to general questions about the import process, if practicable, within 5 business days or acknowledge receipt of the inquiry and provide an estimated time for response. The Division of Import Operations and Policy (DIOP) in the Office of Regulatory Affairs (ORA) will compile a list of answers to questions frequently asked by industry and post this information on the FDA Web site.
4. FDA will allow interested members of the public to receive email notifications when an Import Alert is posted on the FDA Web site, or an existing Import Alert is updated.
5. FDA will provide contact information for points of contact within each District to whom to direct questions about the import regulatory process.

(Continued above)

In addition, FDA is requesting comments on the following draft proposal:
FDA would review existing procedures to evaluate importers, or third parties working on behalf of importers, who file information electronically about products offered for import. Six action items commit FDA to improving communication to industry about agency policies and procedures:

1. FDA will develop a web-based resource called FDA Basics for Industry that will provide basic information online about the regulatory process governing FDA-regulated products, and include information that is frequently requested by industry.
2. FDA will issue a final version of the "Strategic Priorities FY 2011-2015" by March 2011.
3. FDA will update the agency organizational charts and senior leadership personnel changes on the FDA Web site on at least a quarterly basis and ensure that the level of detail provided on the organizational charts is consistent across the agency.
4. FDA will provide links to the processes available for industry to submit general regulatory questions to each Center.
5. FDA will also aim to respond to general questions about an existing policy, regulation, or the regulatory process that are submitted via email, whenever practicable, within 5 business days or acknowledge receipt of the inquiry and provide an estimated time for response.
6. FDA will post on the FDA Web site slide presentations that are delivered by FDA employees to external audiences at events sponsored by, or co-sponsored by, the agency.

FDA advised four action items focus on improving transparency during the product application review process:

1. FDA will explain how a sponsor is informed about whether the review of its product application is on track to meet the target date for FDA action on the application. FDA is also willing to hold further discussions with industry about application tracking systems, and explore the feasibility of implementing such a system at FDA.

(Continued below)

2. FDA will describe the types of notifications the agency provides to industry with respect to the product application review process. FDA will provide an overview of the processes used to strive for consistency of product application review.
3. FDA will also communicate general expectations about the circumstances, if any, under which it is appropriate to use secure email between FDA and a manufacturer when there is a question involving the manufacturer's product.
4. FDA will compile all FDA Center guidance and standard operating procedures on FDA employees meeting with sponsors about product applications on the web-based resource, FDA Basics for Industry.

Two action items focus on greater transparency around the guidance development process and two action items focus on transparency of the regulations development process:

Commissioner Hamburg has formed a cross-agency workgroup to identify the best practices for improving the agency's work on guidance. FDA will describe the ways in which interested individuals can provide input to the agency about guidance development. Links that provide industry with a list of guidance documents that have been withdrawn during the past year as well as possible topics for future guidance development or revision also will be made accessible in one location on the FDA Web site. After FDA issues a final rule, FDA will conduct outreach to the affected stakeholders as part of implementing the final rule if the rule imposes substantial new obligations. FDA will also work with the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB) to improve the accuracy of the timetables included in the agency's regulatory agenda published as part of the Unified Agenda. In addition to the above steps, FDA is requesting comments on five draft proposals to improve transparency to regulated industry.

(Continued above)

These draft proposals for public comment include:

1. Reviewing existing procedures to evaluate importers, or third parties working on behalf of importers, who file information electronically about products offered for import (also noted above under the importer section);
2. Disclosing, for certain high priority guidance documents in development, a timeline from the start of the agency's work on the draft guidance to publication of the final guidance;
3. Posting on the FDA Web site a list of presentations given by FDA employees to external audiences
4. Informing submitters if an appeal request will be reviewed by the FDA Commissioner and when a decision may be expected; and
5. Initiating a planning process to develop a web-based system that provides information about importing requirements.

Comments on FDA's report are due by 03/08/11

FDA's request for comments (D/N FDA-2009-N-0247, FR Pub 01/07/11): http://www.accessdata.fda.gov/scripts/oc/ohrms/dailylist.cfm?yr=2011&mn=1&dy=7

FDA Posts Monthly Import Refusal Report

The Food and Drug Administration (FDA) posted the Import Refusal Report (IRR) for February 2011. This report covers import refusals involving FDA-regulated products, including cosmetics. The IRR is generated from data collected by FDA's Operational and Administrative System for Import Support (OASIS) and is updated monthly. FDA notice: http://www.accessdata.fda.gov/scripts/ImportRefusals/ir_byCountry.cfm?DYear=2011&DMonth=2

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CRS Posts Report to Congress on Seafood Imports Affecting Safety Efforts (China Advanced Products Causing Trade Friction)

The Congressional Research Service (CRS) issued a report (RS22797) on current food safety programs to protect consumers from contaminated seafood consumption. According to the report, most of the seafood consumed in the U.S. is imported. CRS notes that when compared to the consumption levels of beef and poultry, seafood is responsible for a disproportionate number of food illness outbreaks, usually due to naturally occurring toxins in seafood. Worldwide, nearly a half of all seafood consumed is aquacultured (farm-raised), which may also contain potentially harmful chemicals. CRS reports that increased seafood imports, including from many Asian countries, have complicated efforts to protect consumers from unsafe fish and shellfish. For example, the FDA issued import alerts for farm-raised seafood imported from China which was contaminated with antimicrobial agents not approved for use in the U.S. CRS adds that as of November 2010, three bills focusing specifically on seafood safety had been introduced:

- S. 92, which would require the Health and Human Services (HHS) Secretary to refuse all imports of seafood or seafood products from a country or exporter that does not meet requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act);
- S. 2394, which would amend the FD&C Act to prohibit seafood imports unless the importing country complies with U.S. standards for seafood manufacturing, processing, and holding; and
- H.R. 1370, which would require the Secretaries of Commerce and HHS to enter into a memorandum of understanding for more cooperation and coordination on seafood safety activities.

CRS report:
http://assets.opencrs.com/rpts/RS22797_20101202.pdf

FWS Posts List of Countries with Import Ban for CITES Listed Items

The Fish and Wildlife Service (FWS) published a list of countries that have not, as of 02/03/11, provided the required information to the Convention on International Trade in Endangered Species (CITES) Secretariat on their designated Management Authority and/or Scientific Authority. FWS advised this list supersedes the previous (11/15/10) list of 16 countries and reflects the removal of Bahrain According to the FWS, the U.S. will not allow the import of CITES-listed specimens from countries that have not designated a competent Management Authority and Scientific Authority and communicated such designations to the CITES Secretariat.
Any such shipments will be subject to seizure and forfeiture because of invalid CITES documents.
As of February 3rd, the following countries had not provided information to the CITES Secretariat on their designated Management Authority and/or Scientific Authority:

1. Angola
2. Anguilla
3. Armenia
4. Bosnia and Herzegovina
5. Cape Verde
6. Eritrea
7. Holy See
8. Lebanon
9. Maldives
10. Nauru
11. Niue
12. Oman
13. Timor-Leste
14. Turkmenistan
15. Tuvalu

The trade can check for updated information on these designations at:
http://www.cites.org/common/directy/e_directy.html
CITES requires each Party country to designate a Management Authority and a Scientific Authority for, issuance of CITES documents. The treaty also requires each non-Party country to have competent authorities that can issue comparable CITES documentation. U.S. CITES regulations that went into effect in 2007 require the Party or non-Party issuing CITES documents to have designated a Management Authority and a Scientific Authority and communicated such designations to the CITES Secretariat. Such authorities must be competent to make the required legal and biological findings in order to issue valid CITES documents.FWS notice:
http://www.fws.gov/le/PubBulletins/02032011CITESCompetentAuthorities.pdf

BIS Issues Final Rule Requiring Electronic SNAP-R Registration and Account Maintenance

The Bureau of Industry and Security (BIS) issued a final rule that will amend the Export Administration Regulations (EAR), effective 03/11/11, to implement a mandatory electronic Simplified Network Application Processing-Redesign (SNAP-R) registration process for submitting export license applications and similar documents. According to BIS, it will accept on-line registrations for both filing entities and account administrators from parties who wish to submit them beginning immediately. However, BIS will phase-in mandatory use of on-line registration and account administrators as follows:

- Beginning on 04/11/11, the on-line registration process will be mandatory for all new registrants. A person registering on-line for a filing entity that does not have a SNAP-R account will be required to enter all of the identifying information for the filing entity including a certification that the person is authorized to register the filing entity and to act as account administrator for the filing entity as well as his or her own identifying information. That person will become the initial account administrator for that filing entity.
- Until April 11, an individual registering a filing entity that does not currently have a SNAP-R account may use either the existing paper- and facsimile-based process or the new on-line registration process.

Filing entities that are registered to use SNAP-R will be required to designate an account administrator. Details have been outlined in the notice. According to BIS' regulations, the account administrator is able to:

- add and remove individual users to and from the account of the filing entity for which it is the account administrator;
- make individual users account administrators and terminate an individual user's administrator status;
- deactivate the account of an individual user and reactivate the account of a previously deactivated individual user;
- update the filing entity's identifying information and any individual user's identifying information; and
- reset individual users' passwords.

An individual user may submit to BIS export and re-export license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV. Individual users must, through their account administrators, update their identifying information such as name, telephone number, facsimile number and e-mail address in their SNAP-R accounts as necessary to keep that information accurate and current.

BIS notice (FR Pub 02/09/11)
http://edocket.access.gpo.gov/2011/pdf/2011-2760.pdf

(Continued above)

BIS Posts Speech on Reforms to United States Export Controls

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) posted on its website a speech that Deputy Under Secretary for Industry and Security Daniel O. Hill gave at the C5 Group's European Forum on Export Controls in Brussels on 02/07/11, on the status of U.S. export control reforms. His speech details the Obama Administration's intension to harmonize the U.S. Munitions List (USML) and the Commerce Control List (CCL) by converting the USML to a "positive list" and the three-tiered licensing approach.

Census Had Outages for AESDirect Planned for 2/13 and 2/27

An Automated Export System (AES) broadcast announcing that the AESDirect IT staff will be migrating databases used in AESDirect to new servers, was issued by the Census Bureau. Due to the nature of this work, AESDirect will not be available on Sunday, 02/13/11 from 11:00am EST - 5:00pm EST and on Sunday, 02/27/11 from 11:00am EST - 5:00pm EST. Census will send other e-mail broadcast messages as soon as the AESDirect is back on-line. Census strongly urges filers to file their shipments prior to these outages when possible. According to Census during these outages all AESDirect program filers may submit shipments under the AES Downtime Policy. State Department licensable shipments cannot be exported under the AES Downtime Policy and must be held until the connection is restored and an Internal Transaction Number (ITN) is received. Once the connection is restored, all AESDirect program transactions for shipments that were exported under the AES Downtime Policy must be filed along with any new AES transactions. Census notes that filers that utilize the AES Downtime Policy for export should contact the port where they will export from. In lieu of the AES Proof of Filing citation, filers should use the AES Downtime citation, which consists of the phrase AESDOWN, the individual company's Filer ID, followed by the date. (For example: AESDOWN 123456789 02/13/2011.) AESPcLink filers urged to create; store shipments until AESDirect back on-line. AESPcLink users are encouraged to continue creating and storing shipments in a queue on their local computer for transmission when AESDirect is brought back on-line.

Census contact – AES Branch (800) 549-0595, select option 1 for AES

Additional details on the AES Downtime Policy are available from the U.S. Customs and Border Protection (CBP) Web site at http://cbp.gov/xp/cgov/trade/automated/aes/tech_docs/aestir/june04_intro/.

Justice Posts Information on Indictments for Illegal Importing and Exporting of Firearms

The Justice Department announced that five individuals and a Nashville firearms manufacturer have been indicted for participating in a conspiracy to illegally import and export regulated firearms and firearm components and technology to and from the U.S., in violation of the Arms Export Control Act (AECA). According to the indictment, the defendants had been engaged in the illegal import and export activities since at least 2003. The indictment alleges that each of the defendants conspired to intentionally violate the AECA by causing firearms components, which are listed as defense articles on the U.S. Munitions List (USML), to be exported from the U.S. to an international location without first obtaining a license or written authorization for such export from the Department of State. The export of defense articles, such as firearms, firearms components or other military items on the USML are strictly controlled by the AECA and the International Trafficking in Arms Regulations (ITAR). The defendants and others, including employees of Sabre Defense Industries LLC (SDI-US), a U.S. arms manufacturer, and employees at the SDI U.K. headquarters, conspired to illegally avoid U.S. import and export laws and regulations by falsifying shipping records, concealing unlicensed firearms components in false bottoms of shipping cartons, and mislabeling and undervaluing shipments of firearm components to avoid scrutiny by U.S. Customs and Border Control Officers (CBP). The defendants used international common carriers to ship restricted defense items to and from the U.S., and sought to conceal their activities by maintaining one set of books recording the true transactions by SDI-US, and a second set recording the undervalued amounts used on shipping manifests in an effort to circumvent U.S. export licensing requirements. Justice Dept notice: http://www.justice.gov/opa/pr/2011/February/11-crm-161.html

House HS Committee Posts Testimony from DHS on Commercial Aviation Security and Global Supply Chain

Recently the House Homeland Security Committee held a hearing on homeland security where Department of Homeland Security (DHS) Secretary Janet Napolitano and the Director of the National Counterterrorism Center (NCTC), Michael Leiter, testified on various issues, including commercial aviation and the global supply chain. DHS recently announced a new partnership with the World Customs Organization (WCO) to enlist other nations, international bodies, and the private sector to strengthen the global supply chain. To secure the supply chain, the U.S. must first work to prevent terrorists from exploiting the supply chain to plan and execute attacks. This means, for example, working with customs agencies and shipping companies to keep precursor chemicals that can be used to produce improvised explosive devices (IEDs) from being trafficked by terrorists.

The U.S. must also protect the most critical elements of the supply chain, like central transportation hubs, from attack or disruption. This means establishing global screening standards and providing partner countries across the supply chain with needed training and technology. Finally, the U.S. must work to make the global supply chain more resilient, so that in case of disruption it can recover quickly. DHS knows that aviation – be it cargo or passenger – continues to be a target for terrorist attacks. DHS is working with UPS, FedEx, and other major shippers on how the U.S. secures cargo. DHS is moving towards a "trusted shipper regime" so that secure cargo can move and the U.S. can meet the needs of real time inventory. Security gaps, such as the one that allowed bombs onboard cargo aircraft destined for the U.S. from Yemen in October 2010 are being reviewed in order to close such gaps.

Since that event, the NCTC and the intelligence community has been working to find new ways to support DHS to sharpen its ability to find individuals and shippers considered high risk. DHS is also working to have international standards and requirements for air cargo security with other international organizations (WCO, International Civil Aviation Organization (ICAO), and the International Maritime Organization (IMO)); and with the private industry - air shippers.

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The U.S. is now screening 100% of at-risk cargo on in-bound passenger planes. DHS continues to work with all modes of transportation and all types of cargo to secure the supply chain. The President's fiscal year 2012 budget request is expected to come out on February 14th and Napolitano is expected to testify on the budget request for DHS on February 17th. Napolitano's written testimony covers other recent efforts to strengthen security for commercial aviation and the global supply chain:
http://homeland.house.gov/sites/homeland.house.gov/files/02.09.11%20Sec.%20Napolitano%20Testimony.pdf
Leiter's written testimony:
http://homeland.house.gov/sites/homeland.house.gov/files/02.09.11%20NCTC%20Director%20Leiter%20Testimony.pdf
Testimony posted:
http://homeland.house.gov/hearing/%E2%80%9Cunderstanding-homeland-threat-landscape-considerations-112th-congress%E2%80%9D

Treasury Issues Currency Report -- Does Not List China as Currency Manipulator

The Treasury Department again declined to designate China as a currency manipulator in its Semi-Annual Report to Congress on International Economic and Exchange Rate Policies that is required by the Omnibus Trade and Competitiveness Act of 1988. In October 2010, Treasury announced that it was delaying publication of the twice yearly report in recognition of China 's progress in currency appreciation of the Renminbi (RMB or Yuan) and to take advantage of the opportunities provided the November G-20 meeting, the meeting between President Obama and Chinese President Hu in January 2011. Treasury has again concluded that no major U.S. trading partner, including China, met the statutory standard to be deemed a "currency manipulator" during the period covered in the report. Based on the resumption of China's exchange rate flexibility in June 2010 and the acceleration of the pace of real bilateral appreciation over the past few months, and in view of the commitment during President Hu's state visit that China will intensify its efforts to expand domestic demand and further enhance exchange rate flexibility, Treasury has concluded that the standards for currency manipulation has not been met with respect to China during the period of review. Treasury's view, however, is that progress thus far is insufficient and that more rapid progress is needed. Treasury will continue to closely monitor the pace of appreciation of the RMB by China.
Treasury notice: http://www.treasury.gov/press-center/press-releases/Pages/tg1051.aspx

EU Issues Notice on the July 1, 2011 Effective Date for the FTA with Korea

The European Union issued the following announcement on 02/17/11:
The European Parliament passed its final hurdle to the EU-South Korea free trade agreement (FTA), which will take effect 07/01/11. The agreement aims to eliminate about 98% of import duties and other trade barriers in manufactured goods, agricultural products and services over the next five years. EU notice: http://www.europarl.europa.eu/en/pressroom/content/20110216IPR13769/html/EU-South-Korea-free-trade-agreement-passes-final-hurdle-in-Parliament

ICE Announces Arrest of Importer for Conspiring to Illegally Import China Honey Avoiding AD Duties

The U.S. Immigration and Customs Enforcement (ICE) announced that on 02/15/11, Shu Bei Yuan, a Chinese business agent for several honey import companies, was arrested on federal charges filed in Chicago for allegedly conspiring to illegally import Chinese-origin honey that was falsely identified to avoid U.S. antidumping (AD) duties. Yuan was an employee of Blue Action Enterprise Inc., a California-based honey import company, and of two other related companies, 7 Tiger Enterprises Inc. and Honey World Enterprise Inc. Yuan worked with Hung Ta Fan, the owner these companies, to fraudulently import Chinese-origin honey into the U.S. Fan was arrested and sentenced to 30 months in prison in November 2010, for conspiring to illegally import Chinese honey to avoid more than $5 million in U.S. AD duties. ICE reports that between March 2005 and June 2006, the indictment alleges that Yuan and others allegedly caused Blue Action and 7 Tiger to fraudulently import about six shipments of Chinese honey falsely declared as originating in South Korea, Taiwan and Thailand to avoid U.S. AD duties. The six honey shipments had a total declared value of about $290,464, and avoided AD duties applicable to Chinese honey totaling about $533,872.
According to the indictment, the charges against Yuan relate to an ongoing investigation of the honey importing practices of Alfred L. Wolff Inc. (ALW), and other corporate affiliates of Wolff & Olsen, headquartered in Germany, including ALW Germany, ALW Honey, ALW Beijing, and ALW Hong Kong. In September 2010, 10 ALW executives and five ALW companies were indicted in an $80 million honey fraud importation ring. In total, the U.S. Attorney's Office in Chicago has charged 20 individuals and companies following the honey-related investigations. ICE report: http://www.ice.gov/news/releases/1102/110217chicago.htm

Senate Bill Introduced Which Will Strengthen Criminal Penalties for Food Violations

Senator Leahy (D) reintroduced legislation to strengthen criminal penalties for certain knowing and intentional violations relating to imported or domestic food that is misbranded or adulterated. According to a Senator Leahy press release, the Senate Judiciary Committee, which he chairs, unanimously approved this legislation in September 2010.

Leahy notes that he had sought to include the criminal penalties legislation in the broader FDA Food Safety Modernization Act (FSMA), but that bill was signed into law on 01/04/11 without the penalty provisions he sought. The Senator believes that despite the important passage of the FSMA, work remains to "hold criminals who poison our food supply accountable for their crimes." Under the bill, with respect to any food, any person who "knowingly and intentionally to defraud or mislead" and "with conscious or reckless disregard of a risk of death or serious bodily injury," and who violates the following provisions, would be fined under Title 18 (Crimes and Criminal Procedure) of U.S. law, imprisoned for not more than 10 years, or both:

- introduction or delivery for introduction into interstate commerce of any food that is adulterated or misbranded;
- adulteration or misbranding of any food in interstate commerce;
- receipt in interstate commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise; or
- alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

The bill states that food means: (1) articles used for food or drink for man or other animals; (2) chewing gum, and (3) articles used for components of any such article. Senator Leahy advised that he expects to schedule Judiciary Committee consideration of the legislation "soon."

United States and Canada to Remove ISPM15 Exemption on WPM from Each Country

The Canadian Food Inspection Agency (CFIA) announced that Canada and the U.S. are moving forward with a phased-in approach to eliminate the ISPM 15 exemption they provide to each other's regulated wood packaging material (WPM) that is shipped between the two countries. International Standard for Phytosanitary Measures (ISPM) 15 "Guidelines for Regulating Wood Packaging Material in International Trade" requires regulated Wood Packaging Material (WPM) to be either heat treated or fumigated with methyl bromide and marked with the approved International Plant Protection Convention (IPPC) symbol and specific control numbers certifying treatment. Since 2008, the U.S. and Canada have been discussing implementing termination of their mutual ISMP 15 exemption for regulated WPM with participation from the Canada Border Services Agency (CBSA) and U.S. Customs and Border Protection (CBP). Current APHIS regulations exempt from ISPM 15 requirements regulated WPM that is derived from trees harvested in Canada, has never been moved outside of Canada , and is subject to the inspection and other requirements in 7 CFR 319.40-9.

In December 2010, APHIS issued a proposed rule to eliminate this Canadian exemption. APHIS reports that 43 comments were received on the proposed rule, and it is still in the process of reviewing the comments. The final rule is expected to be published in the Federal Register in late spring of this year, and will include the phase-in schedule to eliminate the Canadian exemption. According to APHIS it will phase-in its removal of Canada 's ISPM 15 exemption. The phase-in schedule, while still under review, is likely to be similar to that proposed by Canada in 2008 for U.S. regulated WPM as follows:

- Informed compliance: This phase would be a period where industry would receive notices (informed compliance) to indicate that they must comply with the ISPM 15 requirements in the future. Notices would be delivered to importers/brokers in connection with any cargo found to contain non-compliant regulated WPM. APHIS sources add that there will be a timeframe where verbal notifications will be provided, to be followed by e-notifications.

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· Pallets and crates enforcement: After the phase of informed compliance, a period of enforcement action on non-compliant pallets and crates would begin where shipments containing non-compliant regulated WPM would not be allowed to enter the country of destination. Importers/exporters with cargo containing other types of non-compliant materials (dunnage, spools, blocking and bracing) would receive notices (informed compliance) to indicate that they will have to comply with the requirements in the future.

· Complete enforcement: full enforcement would commence on all articles of regulated WPM, including dunnage, moving between the U.S. and Canada. Shipments containing non-compliant WPM would be refused entry.

As soon as the final rule is published, APHIS expects to begin providing verbal notifications of noncompliance as provided for in the first phase of implementation. Sources add that the target implementation dates for full enforcement are not yet set in stone, but should take effect no later than 01/01/13.
Canada would have an additional time period to allow industry and stakeholders to adjust their operations to comply with the ISPM 15 standard before it begins its informed compliance phase.
APHIS notice:
http://www.inspection.gc.ca/english/corpaffr/newcom/2011/20110214e.shtml

House Bill Introduced on Clean Truck Programs at Ports

Rep. Jerrold Nadler, D-N.Y., introduced legislation to reduce truck pollution at container ports and to make it easier for the Teamsters union to organize harbor truck drivers. The Clean Ports Act of 2011 is similar to legislation Nadler introduced last year. It would confirm that ports in labor-friendly cities such as Los Angeles, New York, Newark, Oakland and Seattle possess the legal authority to set standards for clean trucks. The Port of Los Angeles clean-truck program seeks to achieve clean-air goals by banning old, polluting trucks and through various concession requirements regulating off-street parking of rigs and requiring maintenance plans for trucks. Also, the Los Angeles plan mandates the use of employee drivers. Most harbor truck drivers across the country are owner-operators, and those independent contractors, by law, cannot be organized by labor unions. The American Trucking Associations (ATA) challenged the Los Angeles concession requirements as violating federal preemption law, which reserves for the federal government the authority to regulate the rates, routes and services of motor carriers engaged in interstate commerce. The case is under appeal to the U.S. Court of Appeals for the 9th Circuit. The Nadler bill envisions a similar regime at ports in cities where the mayors are on record supporting clean-air initiatives and the ability of harbor truck drivers to be organized by labor unions.
www.joc.com (2/9/11)

CPSC Posts Chart to Clarify Rules, Standards, and Bans Certificates Under CPSIA

The Consumer Product Safety Commission (CPSC) posted a chart of its rules, standards and bans, listing which Consumer Product Safety Improvement Act of 2008 (CPSIA) certification requirements apply, the dates those requirements apply, and any stays of enforcement in place for these certification requirements. CPSC is listing whether one or both of the following certificates are required for a given rule, standard, or ban:

1. a General Conformity Certificate (GCC), which is based on either a test of each product or on a reasonable testing program; or
2. a Children's Product Certificate, which is based on third-party testing by a CPSC accredited lab. chart:http://www.cpsc.gov/about/cpsia/reqstay.html

CPSC chart: http://www.cpsc.gov/about/cpsia/reqstay.html

TSA Testifies on Air Cargo/Surface Transport Security

Transportation Security Administration (TSA) Administrator Pistole recently testified before the House Homeland Security Committee's Subcommittee on Transportation Security. His written statement and responses to Committee questions and concerns covered TSA's efforts to improve air cargo security, surface transportation, and the Transportation Worker Identification Credential (TWIC) process. According to Pistole, TSA continues to take aggressive action to improve the security of air cargo throughout the global air cargo network, including:

- TSA issued security requirements restricting the transport of printer and toner cartridges, prohibiting elevated risk cargo from transport on passenger aircraft, requiring other cargo to undergo screening, and establishing requirements for handling international mail.
- In January 2011, TSA issued a proposed air carrier security program change to increase security measures for air cargo, most notably, to require 100% screening of inbound international cargo transported on passenger aircraft by 12/31/11. TSA expects to finalize the programs in Spring 2011 after evaluating industry comments.
- TSA has implemented 100% cargo screening for air cargo loaded on U.S. originating (domestic) passenger aircraft as of August 2010; however, no significant cargo delays have occurred due to the efficient combination of Certified Cargo Screening Program (CCSP) and airline screening.
- TSA is taking a leadership role in partnering with industry and other federal government partners to develop strategies to strengthen air cargo security while facilitating the flow of commerce. TSA is also working closely with U.S. Customs and Border Protection (CBP) and the air cargo industry to receive and process pre-departure, advanced air cargo information from shippers earlier than is currently required so that it can increase the focus of screening resources on high-threat cargo. Pistole noted that TSA is working with its partners in securing the surface transportation networks of the U.S., working closely with transit agencies and state and local officials to assist them in defining and meeting their security requirements.

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TSA Surface Inspectors engage in all surface modes with activities ranging from inspecting rail yards and hazmat conveyances for regulatory compliance to assisting in the development of security and incident management plans. In the transit mode, the Surface Security Inspector program improves security by conducting field visits to assess the base line of security and subsequently developing action plans and assisting properties and agencies to improve their specific security programs.

In addition, TSA's VIPR teams are designed to enhance security by working aviation, rail and other transportation modes alongside local law enforcement agencies during specific times or events. VIPR teams are comprised of personnel with expertise in inspection, behavior detection, security screening, and law enforcement, and enhance TSA's ability to leverage a variety of resources quickly to increase security in any mode of transportation anywhere in the country. TSA enhanced surface transportation security by conducting over 3,750 VIPR operations in 2010 in the various modes of surface transportation. VIPR operational plans are developed with a risk-based methodology, in conjunction with local transportation security stakeholders, and conducted jointly by TSA, local law enforcement, and transportation security resources. TSA also reported that over the last two years, over 1.6 million workers have enrolled in the Transportation Worker Identification Credential (TWIC) program. TSA has processed 50,000 appeals and waiver requests, and continues to improve the adjudication process. TSA is also concluding the TWIC Reader Pilot Program, wrapping up formal data collection, and working on the report to Congress. TSA continues to coordinate these efforts with the Coast Guard to ensure a high level of security and operational effectiveness. In response to questions from Committee members regarding the redundancies in transportation credentials, Pistole acknowledged that redundancies exist in credentialing applications and background checks and committed to working with the Committee to address such issues. TSA Administrator Pistole's written statement: http://www.dhs.gov/ynews/testimony/testimony_1297290189028.shtm

USTR Talks to Ways and Means About FTAs

In a hearing before the House Ways and Means Committee, U.S. Trade Representative (USTR) Ron Kirk provided some additional details on the Obama administration's trade policy, including its intentions with respect to the pending free trade agreements (FTAs) with Korea, Colombia and Panama. According to Kirk, the president intends to submit the Korea FTA to Congress "in the next few weeks" and hopes lawmakers will approve it "this spring." That is consistent with supporters' goal of congressional passage by 07/01/11, the date a similar pact between Korea and the European Union will take effect. The U.S. and Korea recently finalized the text of a supplemental agreement on automobiles, paving the way for implementing legislation to be sent to Congress. Kirk noted the White House hopes to find a way forward this year with the FTAs with Colombia and Panama. Committee Chairman Dave Camp questioned why the administration has not provided an outline of "reasonable steps" that must be taken to address the outstanding issues, a timeframe for resolution or a commitment to action. "Frankly," he added, "the lack of commitment on these critical, job-creating agreements is hindering the rest of our trade agenda – most notably ATPA [the Andean Trade Preferences Agreement] and TAA [the Trade Adjustment Assistance program] (see related story this issue)."

In discussing the administration's trade priorities for 2011 Kirk also highlighted efforts to:

- negotiate the Trans-Pacific Partnership Agreement (TPP);
- conclude the long-running Doha Round of trade liberalization talks among World Trade Organization (WTO) members;
- finalize Russia 's membership in the WTO, including granting permanent normal trade relations status to Russian goods "so that U.S. firms and workers fully benefit from Russia 's accession;"
- facilitate and increase trade with Asia, North America and Europe
- enforce U.S. trade rights; and
- renew the Generalized System of Preferences (GSP) and the ATPA "for as long a period as possible."

http://www.strtrade.com/wti/wti.asp?pub=0&story=36383&date=2%2F10%2F2011&company

House and Senate Bills Introduced on China Currency

The Currency Reform for Fair Trade Act of 2011 was recently introduced in both the House (H.R. 639) and Senate. According to a press release from Senator Brown (D), the bill would direct the Department of Commerce (DOC) to treat currency undervaluation as a prohibited export subsidy. The legislation could result in the imposition of countervailing duties (CVD) on subsidized exports from countries like China. In a press release from Representative Levin (D), the bill is nearly identical to H.R. 2378; legislation passed by the House in September 2010 by a vote of 348-79 (but not passed by the Senate in the 111th Congress). Senator Levin commented that "the measures included in this bill provide the Administration with additional tools for enforcing the rules of trade and are consistent with our WTO obligations. It will also bolster the Administration's efforts to bring about a multilateral framework for addressing this global issue." Senator Brown noted, "the Chinese government has taken small steps to allow the yuan to appreciate, but it is not enough. Congress must take action immediately to address Chinese currency manipulation and pass legislation that will empower our government to combat this illegal trade subsidy. By combating currency manipulation, we can help level the playing field for American manufacturers and speed up our economic recovery." According to Senator Snowe (R) a co-sponsor of the bill, "One significant contributing factor to the withering of our country's once-unparalleled manufacturing base is the fact that China 's government deliberately suppresses the renminbi's value, making Chinese imports artificially cheaper when competing against U.S. products. I look forward to working with my colleagues to enact these vital provisions into law to prevent our trading partners from further undercutting true market

Representative Levin's press release:
http://democrats.waysandmeans.house.gov/press/PRArticle.aspx?NewsID=11455

Senator Brown's press release:
http://brown.senate.gov/newsroom/press_releases/release/?id=80F8803C-1B6A-4F10-B07D-DE01895D4FFF

Affordable Footwear Act of 2011 Introduced in Senate

Senator Ensign (R) introduced S. 108, the Affordable Footwear Act of 2011, to eliminate the duties on certain imported footwear articles that would provide significant benefits to U.S. consumers. S. 108 has been referred to the Senate Finance Committee and no further action has been taken. In the 111th Congress, Senator Ensign introduced a virtually identical bill (S. 730) in March 2009 and Representative Crowley introduced a House version of the Affordable Footwear Act (H.R. 4316) in December 2009. Similar legislation (H.R. 3934 and S. 2372) was also introduced in the 110th Congress. S. 108 contains would provide duty-free treatment to certain footwear by amending existing Harmonized Tariff Schedule HTS subheadings or by adding new ones. The measure would also amend HTS Chapter 64 Additional U.S. Note (AUSN) 1 by adding definitions for "footwear for men" and "footwear for women;" and create new AUSNs 5, 6, 7, and 8 for work footwear, house slippers, outer soles of rubber or plastics, and certain dollar amounts for footwear. The bill would also amend 19 USC 2703a by adding a special rule for footwear. Under that special rule, footwear that is the product or manufacture of Haiti and is imported directly from Haiti into the customs territory of the U.S. would be accorded tariff treatment identical to the tariff treatment that is accorded under the Dominican Republic-Central America-U.S. Free Trade Agreement (DR-CAFTA) to footwear described in the same 8-digit subheading of the HTS. Footwear would qualify for such treatment if it satisfies the applicable rule of origin set out in DR-CAFTA Article 4.1.
Affordable Footwear Act of 2011 S. 108:
http://www.gpo.gov/fdsys/pkg/BILLS-112s108is/pdf/BILLS-112s108is.pdf

EU Posts New Regulation for Plastic Materials in Contact with Food Effective May 2011

The European Commission (EC) adopted a new Regulation (No. 10/2011), which applies specific requirements for the safe use of plastic materials and articles intended to come into contact with food. This Regulation entered into force on 02/04/11 and will apply from 0501/11. The Regulation also provides several transitional provisions, including a provision allowing materials and articles that have been lawfully placed on the market before 05/01/11 to remain on the market until 12/31/12. This new Regulation repeals the previous directive on this topic (Commission Directive 2002/72/EC) adopted in August 2002, which applied to materials and articles purely made of plastics and to plastic gaskets in lids, which were the main use of plastics on the market at the time. According to the EC, the new regulation is more extensive as it covers plastics also used in combination with other materials in so-called multi-material multilayers. The plastics covered by this regulation include: materials and articles and parts thereof consisting exclusively of plastics; plastic multi-layer materials and articles held together by adhesives or by other means; any such materials and articles that are printed and/or covered by a coating; plastic layers or plastic coatings, forming gaskets in caps and closures, that together with those caps and closures compose a set of two or more layers of different types of materials; and plastic layers in multi-material multi-layer materials and articles. The new regulation includes:

- Testing documentation;
- Declaration of compliance; and
- Excludes rubber, silicones, or ion exchange resins.

The new Regulation provides a complete list of 885 monomers, other starting substances, additives, polymer production aids, and macromolecules from microbial fermentation in Annex I (Substances), which are authorized at the EU level. The Regulation provides a list of substances and their migration limits and also defines food stimulant limits. EC notice:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2011%3A012%3A0001%3A0089%3AEN%3APDF

United States and Canada Issue Declaration on Security and Trade

During a recent visit by Canadian Prime Minister Harper, the U.S. and Canada issued a declaration on a new perimeter approach to security and trade; called for the creation of a council to deal with outdated regulations that stifle trade and job creation; and discussed a variety of other trade and security issues. At the meeting, the U.S. and Canada issued a declaration for a new vision for managing shared responsibilities, not just at the border, but "beyond the border." According to the declaration, the U.S. and Canada intend to pursue a perimeter approach to security, working together within, at, and away from the borders of the two countries to enhance security and accelerate the legitimate flow of people, goods, and services between the two countries. The U.S. and Canada intend to do so in partnership, and in ways that support economic competitiveness, job creation, and prosperity. The declaration states that the key areas of U.S.-Canada cooperation are:

1. address threats early;
2. trade facilitation, economic growth, and jobs;
3. integrated cross-border law enforcement; and
4. critical infrastructure and cybersecurity.

The U.S. and Canada will streamline procedures for customs processing, regulatory compliance, integrate cargo security strategy, manage border traffic flow, ensure sufficient border crossing capacity, enhance risk management practices by planning together, and integrate, where practicable, development of joint facilities and programs, while improving intelligence and information sharing. U.S. and Canada also agreed to establish and verify the identities of travelers and conduct screening at the earliest possible opportunity. Create integrated U.S.-Canada entry-exit system and formulate joint U.S.-Canada privacy protection. The U.S. and Canada intend to establish a Beyond the Border Working Group (BBWG) composed of representatives from the appropriate departments and offices of their respective federal governments.

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The mandate of the BBWG will be reviewed after three years. In addition, during their discussions, the U.S. and Canada have directed the creation of a U.S.-Canada Regulatory Cooperation Council (RCC), composed of senior regulatory, trade, and foreign affairs officials from both governments. The RCC will have a two-year mandate to work together to promote economic growth, job creation, and benefits to U.S. and Canada consumers and businesses through increased regulatory transparency and coordination. The RCC's first meeting will be convened within 90 days by the relevant agencies.

Remarks by President Obama, Prime Minister Harper: http://www.whitehouse.gov/the-press-office/2011/02/04/remarks-president-obama-and-prime-minister-stephen-harper-canada-joint-p

U.S. and Canada Declaration http://www.whitehouse.gov/the-press-office/2011/02/04/declaration-president-obama-and-prime-minister-harper-canada-beyond-bord

Statement on RCC: http://www.whitehouse.gov/the-press-office/2011/02/04/joint-statement-president-obama-and-prime-minister-harper-canada-regul-0

House Bill Introduced on Infrastructure Fees assessed against Imports and Exports

Representatives Calvert (R) and Jackson (D) recently introduced H.R. 526, the ON TIME Act, which would require the establishment and collection of fees on imports into and exports from the U.S. which would be used to carry out certain transportation projects. An identical measure was introduced by these two representatives in 2009. The bill has been referred to the House Committees on Transportation and Infrastructure, Ways and Means, and Foreign Affairs. The fee would be set at .075% of the value of the imported or exported article, or $500, whichever is less. The fee would be paid by the shipper of the goods moving through the point of entry using an existing line item on current customs forms. The fee would end after fiscal year 2022.

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According to the press release, 100% of the fees collected would be invested in specific and prioritized transportation improvement projects within the same National Transportation Gateway Corridor (NTGC). For example, if the Port of Los Angeles brings in $200 million worth of revenue in fees, the $200 million will go into transportation projects in the NTGC proceeding from the port of Los Angeles. The funds will be distributed to projects in the corridors on an 80/20 matching basis (80% of the funds would come from the revenue generated by the ON TIME Act and 20% would come from other sources, such as state and local transportation funds. Projects eligible to receive funding would include, but would not be limited to, freeway expansion, grade separations, dedicated truck lanes, and publicly-owned intermodal freight transfer facilities. Under the legislation, each state's transportation agency is required to consult with local governments, transportation agencies and freight stakeholders to rate, prioritize, and select which goods movement projects receive funding. It was noted that in 1998 the U.S. Supreme Court ruled in U.S. Shoe Corp. vs. U.S. that the Harbor Maintenance ax (HMT or HMF) as applied to exports was unconstitutional, and the export portion of the tax was eliminated.

CPSC Posts Testimony from Trade on 100PPM Lead Limit for Children's Products

The Consumer Product Safety Commission held a public hearing on 02/16/11 to receive views from all interested parties about the technological feasibility of meeting the 100 parts per million (ppm) lead content limit for children's products and associated public health considerations. CPSC has explained that the Consumer Product Safety Improvement Act of 2008 (CPSIA) provides that, as of 08/14/11, children's products may not contain more than 100 ppm of lead, unless CPSC determines that such a limit is not technologically feasible. CPSC notes that the CPSIA provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

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- a product that complies with the limit is commercially available in the product category;
- technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;
- industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or
- alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

If CPSC determines that the 100 ppm lead content limit is not technologically feasible for a product or product category, the CPSIA requires the Commission, by regulation, to establish the lowest amount below 300 ppm that it determines is technologically feasible. The trade again stated that variations in test lab results are especially problematic when testing to minute levels of a substance such as 100 ppm of lead. Due to this variability, the same product could be compliant if tested by one lab and fail if tested by another. The labs testifying generally agreed, stating that variability is inherent in all testing, due to slight changes in the way a test is performed, the number of steps involved, etc. The trade believes that without an "allowable range" to account for this variability, many products will fail and product lines will have to be discarded due to what seems "bad luck." There was general agreement that the 100 ppm lead content limit for children's products is technologically feasible for plastics. There was also general consensus, though not as strong, that the limit is also technologically feasible for glass and ceramics. Several members of the trade cautioned that just because it is technologically feasible does not mean it is without significant costs. One noted that bringing the lead level down to 300ppm was very costly for the toy, juvenile product, and textile industries and would be just as great to reduce to 100ppm. There was also general consensus that metallic metals and non-heterogeneous metal alloys are the materials that would have the most difficulty meeting the 100 ppm limit.

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Most in the trade agreed it was in fact not technologically feasible, while the scientific and lab representatives noted only that it would be the most problematic. One representative of various children's product industries reported that certain component parts used across many children's product industries would fall into this "problematic" metallic, non-heterogeneous metal alloy category, such as fasteners, bolts, etc. He urged CPSC to make a general finding of "not technologically feasible" for these components so all industries could take advantage of it. Representatives of the bicycle industry also sought a "not technologically feasible" determination, but one specific to their product, for metallic parts of bikes. The trade also brought up other past complaints related to the 100 ppm limit, including the fact that many businesses may have to use virgin materials as recycled materials, especially recycled plastics, have lower test predictability. They also again discussed the fact that the 100ppm limit is "retroactive" as it applies on a specific date and is not based on date of manufacture. Therefore, as currently written, the limit would affect all children's products sold on or after 08/14/11, including those sold from store shelves or inventory that were manufactured earlier. However, Chairman Tenenbaum emphasized that all five Commissioners are on record as saying the 100ppm limit should not be applied retroactively and they will do what they can on this issue. In addition, some brought up what they believe is the unfortunate lack of risk analysis in the lead content limits set by Congress, though many felt that this concern should be addressed directly to Congress.
CPSC notice:
http://www.cpsc.gov/webcast/previous.html

BIS Posts Advisory Opinion on Cloud Computing and Deemed Exports

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) posted on its website a redacted Advisory Opinion on cloud computing and deemed exports. The requestor sought confirmation that the Export Administration Regulations (EAR) do not require cloud computing service providers to obtain deemed export licenses for foreign national information technology (IT) administrators who service and maintain their cloud computing systems.
The requestor sought confirmation that the Export Administration Regulations (EAR) do not require cloud computing service providers to obtain deemed export licenses for foreign national information technology (IT) administrators who service and maintain their cloud computing systems. BIS responded that as stated in its 01/13/09 Advisory Opinion, the service of providing computational capacity through grid or cloud computing is not subject to the EAR, since the service provider is not shipping or transmitting any commodity, software, or technology subject to the EAR to the user. Because the service provider is not an "exporter," it would not be making a "deemed export" if a foreign national network administrator monitored or screened user-generated technology subject to the EAR. BIS noted that its analysis does not apply to the release by cloud computing service providers of technology subject to the EAR to their foreign national employees under other sets of facts. http://www.bis.doc.gov

Treasury Issues Currency Report -- Does Not List China as Currency Manipulator

The Treasury Department again declined to designate China as a currency manipulator in its Semi-Annual Report to Congress on International Economic and Exchange Rate Policies that is required by the Omnibus Trade and Competitiveness Act of 1988. In October 2010, Treasury announced that it was delaying publication of the twice yearly report in recognition of China 's progress in currency appreciation of the Renminbi (RMB or Yuan) and to take advantage of the opportunities provided the November G-20 meeting, the meeting between President Obama and Chinese President Hu in January 2011.

Treasury has again concluded that no major U.S. trading partner, including China, met the statutory standard to be deemed a "currency manipulator" during the period covered in the report. Based on the resumption of China's exchange rate flexibility in June 2010 and the acceleration of the pace of real bilateral appreciation over the past few months, and in view of the commitment during President Hu's state visit that China will intensify its efforts to expand domestic demand and further enhance exchange rate flexibility, Treasury has concluded that the standards for currency manipulation has not been met with respect to China during the period of review. Treasury's view, however, is that progress thus far is insufficient and that more rapid progress is needed. Treasury will continue to closely monitor the pace of appreciation of the RMB by China.

Treasury notice:http://www.treasury.gov/press-center/press-releases/Pages/tg1051.aspx