



EIB World Trade Headlines

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April 2011 - Vol 3 Issue 8

BIS Issues Fine to Firm for Unlicensed Exports to China and Israel

The Bureau of Industry and Security (BIS) announced that TW Metals, Inc. of Pennsylvania, has agreed to pay a \$575,000 civil penalty to settle allegations that it exported titanium alloy and aluminum bar to China and Israel without the required export licenses, in violation of the Export Administration Regulations (EAR). BIS alleged that between April 2004 and August 2007, TW Metals made 48 exports of titanium alloy, controlled for reasons of nonproliferation, through Canada to China without the required Commerce Department licenses. Additionally, TW Metals engaged in conduct prohibited by the EAR in July 2007 by exporting aluminum bar, also controlled for reasons of nuclear nonproliferation, through Canada to Israel without the required Commerce Department license. According to BIS, TW Metals voluntarily disclosed the violations, which BIS notes is a significant mitigating factor when considering administrative settlements. BIS notice: https://www.bis.doc.gov/news/2011/bis_press03152011.htm

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State Dept Issues Proposed Rule to Amend ITAR License Exemption for Temporary Export of Chemical Protective Gear

The State Department recently issued a proposed rule to amend the International Traffic in Arms Regulations (ITAR) to add a licensing exemption for the temporary export of chemical agent protective gear covered by the U.S. Munitions List (USML) for exclusive personal use to destinations not subject to restrictions, and to Afghanistan and Iraq under specified conditions. In addition, the proposed rule would clarify the licensing exemption for firearms and ammunition. Comments are due by 05/23/11. As reported, the proposed rule would revise 22 CFR 123.17(f) to add chemical agent protective gear for personal use to the license exemption for temporary export of body armor. In addition, the proposed rule would revise 22 CFR 123.17(g) to add chemical agent protective gear to the license exemption for temporary export of body armor for personal use to Afghanistan and Iraq. The proposed rule would also add new paragraph (g)(3) to 22 CFR 123.17 to state that: "The exporter claiming this license exemption shall present to a U.S. CBP officer prior to each export a copy of the direct authorization from the Government of Iraq, including an English translation, or a copy of the documentation showing that the travel is on official business for the U.S. government, along with the Internal Transaction Number (ITN) for the Automated Export System (AES) submission."

USITC Issues Notice on Delay of Report for Changes to Duty-Free Festive Articles in HTS Concerning Apparel and Utilitarian Articles

The International Trade Commission (ITC) has advised it is again delaying the issuance of its report containing recommendations to the President on whether to modify the Harmonized Tariff Schedule (HTS) to make certain festive apparel and other utilitarian articles duty-free. The deadline for the ITC's report is now 04/28/11. This is the second delay. In September 2010, ITC instituted an investigation into U.S. Customs and Border Protection's (CBP's) request to add a new Chapter 98 U.S. note and amend certain Chapter 98 tariff numbers in order to provide duty-free treatment to certain utilitarian articles (including apparel) that incorporate a festive design, decoration, emblem or motif. The ITC had proposed that the President implement CBP's requested changes, with one further clarifying change. Comments were due by 10/22/10. Currently, certain utilitarian articles with festive designs and/or motifs are excluded from duty-free treatment in HTS Chapter 95 by note 1(V) to that chapter. ITC notes this notice is being issued as an update only, and interested parties are not being asked or invited to submit additional views. The affected articles are tableware, kitchenware (except baking pans, cookie cutters, cookie stamps and presses) and toilet articles of chapter 39, 69 or 70; carpets and other textile floor coverings of chapter 57; apparel and accessories of chapter 61 or 62; and made-up textile articles of chapter 63.

ICAO and WCO Agree to Firm Up Cooperation on Global Air Cargo Security

The World Customs Organization (WCO) announced that Secretary General Mikuriya and his counterpart at the International Civil Aviation Organization (ICAO) have agreed to expand cooperation between their two agencies in tackling threats to global air cargo security. As reported, a closer collaboration between the WCO and ICAO is expected to significantly minimize the operational and financial impact of security measures by reducing or eliminating duplication in systems and processes, while enhancing synergies.

WCO notice: <http://www.wcoomd.org/press/?v=1&lid=1&cid=8&id=252>

State Department Issues Proposed Rule to Add New License Exceptions for Replacement Parts and Incorporated Articles - Comment Due by 4/14/2011

The State Department (DOS) recently issued a proposed rule to amend the International Traffic in Arms Regulations (ITAR) to add new license exceptions for the export of:

1. replacement parts and components for U.S.-origin end items and components, and
2. articles to incorporate into EAR end items.

Comments are due by 04/14/11.

DOS reports the current rule regarding replacement parts and components imposes burdensome requirements for additional licenses for licensed end-users and end-uses for systems and components already vetted in earlier licenses. Therefore, DOS is proposing to streamline the flow of parts and components and eliminate this redundancy in licensing by adding a new section 28 to 22 CFR 123, to facilitate the expeditious repair of U.S. origin end-items that were sent abroad. The proposed rule would amend 22 CFR 123 by adding section 28 on "exemptions for the export of replacement parts or components in support of end-items previously exported from the U.S.," to read as follows:

- Port Directors of U.S. Customs and Border Protection (CBP) shall permit the export without a license of parts or components of U.S.-origin end-items, as defined in section 121.8(a), held in the inventory of a foreign government when all of the following conditions are met:
 - The exporter is not subject to policy of denial (22 CFR 126.7 and 127.7), is not otherwise ineligible (22 CFR 120.1(c)), and the authority to claim the exemption has not been revoked in accordance with paragraph (c) of this section; and

(Continued above)

- o The exporter was the applicant of a previously approved authorization to export the U.S.-origin end-item as defined in 22 CFR 121.8(a); and
- o The replacement parts or components being exported do not upgrade the capability of the end item as originally exported. (Note: This does not preclude the export of replacement parts or components that would result in enhancements or improvements only in the reliability or maintainability of the U.S.-origin end-item, such as an increased mean time between failure (MTBF) when a part identical to that originally exported is not available); and
- o The type, amount, and frequency of the exports are consistent with repair and replacement in accordance with normal logistical support requirements for the number of end-items in the end-user inventory; and
- o The value of the purchase order or contract for the export does not exceed the requirements for congressional notification set forth in 22 CFR 123.15; and
- o The consignee of the shipment is the foreign government approved under the original export authorization; and
- The foreign government end-user is not subject to restrictions under 22 CFR 126.1 of this subchapter; and

(Continued below)

- o The replacement parts or components being exported meet all the restrictions, limitations, and provisos (including those on the handling or control of the replacement parts or components) in the original export authorization for the end-item; and
- o The replacement parts or components being exported are consistent with the U.S. Government authorized maintenance activities.

The proposed rule would add paragraph 28(b) to 22 CFR 123 to state that in order to claim the exemption, the exporter must meet all the following conditions:

- (1) Be in possession of a purchase order from the foreign government end-user; and
- (2) Cite in its Automated Export System (AES) filing at the time of export the license number authorizing the previously approved export of the U.S.- origin defense article as required under paragraph (a)(2) of this section; and
- (3) Provide, upon request of the Port Director, a copy of the license cited in paragraph (b)(2) of this section and a copy of a purchase order required by paragraph (b)(1) of this section; and
- (4) If the replacement parts or components are shipped, the exporter must use the U. S. Postal Service (USPS), or only those freight forwarders registered with the Directorate of Defense Trade Controls (DDTC) and eligible or licensed customs brokers that are subject to background investigation and have passed a comprehensive examination administered by CBP. If export is by hand carry, the exporter must ensure that the AES filing is completed at the time of export; and

(Continued above)

- (5) Maintain records, to be provided on request to the DDTC, U.S. Immigration and Customs Enforcement (ICE), CBP, and other authorized U.S. law enforcement agencies, that support the exporter's authority to use the exemption in accordance with the requirements of paragraphs (a)(1) through (9) and (b)(1) and (2) of this section.

DOS explains that this exemption would not apply to exporters who are otherwise ineligible. DOS notes that the proposed rule would limit ITAR coverage to where diversion of the embedded defense article is a realistic and practical concern. The proposed rule would amend 22 CFR 126 by adding section 19 to set out conditions under which a DDTC license would not be required for the export or re-export of defense articles incorporated into an end-item subject to the EAR. In addition, The proposed rule would add paragraph 19(a) to 22 CFR 126 to state that a license or other DOS approval would not be required for the export or re-export of a defense article(s) that has/have been incorporated into an EAR subject end-item (15 CFR 734.3), when all of the following conditions are met:

- (1) The end-item would be rendered inoperable, for purposes of intended applications or enhanced capabilities for which the defense article was incorporated into the end-item, by the removal of the defense article(s); and
- (2) "Technology" subject to the EAR for the "production," "development," or "use" (15 CFR 772.1) of the end-item does not include any technical data (22 CFR 120.10) or "technical assistance" (15 CFR 772.1) qualifying as defense services (22 CFR 120.9) about the defense article(s) incorporated into the end-item; and
- (3) Incorporation of the defense article(s) does/do not provide, nor is it related to, a military application or "military end-use" (15 CFR 744.21), or does not result in a "military commodity" (15 CFR 772.1); and
- (4) The value of the defense articles is less than 1% of the value of the end-item.

(Continued below)

The proposed rule would add paragraph 19(b) to 22 CFR 126, to similarly state that a license or other DOS approval is not required for the export or re-export of a defense article(s) that has/have been incorporated into a EAR subject component (section 121.8(b) of the ITAR) or end-item, when all the listed conditions are met.

DOS advises that the proposed 22 CFR 126.19 would not go into effect until the Department of Commerce's Bureau of Industry and Security (BIS) amends its regulations such that the Chemical Control List (CCL) and DOS' ITAR provide complimentary coverage of the articles in question.

DOS Contact – Nicholas Memos (202) 663-2804
DOS notice (FR Pub

03/15/11) <http://edocket.access.gpo.gov/2011/pdf/2011-5821.pdf>

BIS Posts Information on 2011 Update Conference on Export Controls and Policy

The Bureau of Industry and Security (BIS) announced the annual Update Conference on Export Controls and Policy scheduled for July 19 – 21, 2011 in Washington, DC. The conference will allow the exporting community the opportunity to engage senior government officials about current issues and trends in export control policies, regulations and practices. It also provides the opportunity to network with colleagues in the export control industry and learn about programs and services offered by government and industry exhibitors. Additional information and registration will be available in the late Spring.

BIS notice:

<https://www.bis.doc.gov/seminarsandtraining/update201>



Global Import & Export

FDA Posts Updated Questions and Answers on Japan Food Safety Issue

The Food and Drug Administration (FDA) recently updated its question and answer document on what it is doing to ensure the safety of products imported from Japan in light of the recent earthquake, tsunami, and resulting nuclear power plant issues. In order to complement the measures that Japan has taken and to strengthen the global food safety net regarding certain products, on 03/22/11, FDA issued an Import Alert regarding the detention of certain milk and milk products and fresh vegetables and fruits produced or manufactured from the four Japanese prefectures of Fukushima, Ibaraki, Tochigi and Gunma. In addition, FDA will continue to flag all entries from Japan in order to determine whether they originated from the affected area. FDA will test all food and feed shipments from the affected area.

FDA notice:

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm247403.htm>

Export.Gov Posts Updated List of Trade Missions

April 25-29, 2011:

NC/SC DEC Magellan Trade Mission to Colombia; Bogota, Colombia

May 2-4, 2011:

U.S. Aerospace Supplier and Investment Mission; Montreal, Canada

May 22-27, 2011:

Arizona District Export Council Trade Mission to Colombia and Panama; Bogota, Colombia and Panama City, Panama

June 20-24, 2011:

Eurasian Oil & Gas Trade Mission 2011; Almaty, Kazakhstan and Istanbul, Ankara, Almaty, Turkey

Aug 21-26, 2011:

Business Development Mission to Peru and Chile; Lima, Peru and Santiago, Chile

Export.gov 2011 Trade Missions::

http://www.export.gov/eac/show_short_trade_events.asp?CountryName=null&StateName=null&IndustryName=null&TypeName=Trade%2520Mission&StartDate=null&EndDate=null

Export.Gov Updates List of Upcoming Webinars - Posts List of Previously Recorded Webinars

- 04/12/11** - Pet Products Market Opportunities in Czech Republic, Poland, and Spain
- 04/13/11** - A Basic Guide to Exporting: Cashing In With U.S. Free Trade Agreements
- 04/13/11** - Business Development in Afghanistan
- 04/13/11** - International Shipping and Logistics Webinar
- 04/14/11** - Opportunities in Poland
- 04/18/11** - Biomass Energy - Export Opportunities and Government Programs
- 04/19/11** - Requisitos de Transmisión
- 04/20/11** - Dollars & Cents Matter! IC-DISC Program
- 04/20/11** - Dollars & Cents Matter! Making the Most of Your Export Financial Toolkit
- 04/26/11** - Clasificación de Mercancías de Exportación
- 04/27/11** - A Basic Guide to Exporting: U.S. Census: Filing Requirements (F.T. Regulation)
- 04/27/11** - Legal Aspects of International Trade Webinar
- 04/27/11** - Shipbuilding Procurement Opportunities in Brazil
- 04/28/11** - Dollars & Cents Matter! VAT Reclaim (Part II)
- 05/05/11** - Export Lending Programs, Insuring Foreign Receivables, Export Pricing
[Export.gov 2011 seminar schedule: http://www.export.gov/eac/show_short_trade_events.asp?CountryName=null&StateName=null&IndustryName=null&TypeName=Webinar&StartDate=null&EndDate=null](http://www.export.gov/eac/show_short_trade_events.asp?CountryName=null&StateName=null&IndustryName=null&TypeName=Webinar&StartDate=null&EndDate=null)

USTR Issues Notice on Export Conference for SMEs

The U.S. Trade Representative (USTR) announced that a conference, "New Markets, New Jobs," will be held on 04/11/11 in New Orleans, LA, as part of the National Export Initiative (NEI) Small Business Tour. The conference is designed to help SMEs address challenges in getting their products to new markets, and facing strong competition from foreign companies and governments. The conference will include trade resource panels on key export topics and Regional Commercial Officers from the Caribbean, Central America and Brazil, to guide companies in the process of selling their products to consumers around the world.

USTR notice: <http://www.ustr.gov/about-us/press-office/blog/2011/march/announcement-nei-event>

China Posts Information on Discussions with Korea and Japan over Three-Way Trade Agreement

Xinhuanet reports that South Korea, China and Japan will conduct a feasibility study on a three-way free trade agreement (FTA) on March 28 - April 1, 2011. Approximately 90 officials from the three countries will join a three-day meeting, to discuss a draft of a joint report on trade relations among the countries and commodities issues. This meeting is the fourth of its kind; which was initially launched in 2010. As reported they plan to hold similar meetings three to four times this year so that the joint study will be completed when a three-way summit conference attended by their leaders in 2012.

Xinhuanet release:

http://news.xinhuanet.com/english2010/china/2011-03/23/c_13794102.htm

BIS Posts Notice of Requirement for Designated Administrator for SNAP-R Accounts - Due by 6/9/2011

The Bureau of Industry and Security (BIS) issued a reminder that all Simplified Network Application Processing-Redesign (SNAP-R) account holders with at least one active SNAP-R account must designate an administrator by 06/09/11. BIS advises that after this date, all active SNAP-R user accounts without a designated company administrator will become inactive until at least one company administrator is designated. BIS notice: <http://www.bis.doc.gov>

WCO Meets with TSA to Discuss Strengthening Air Cargo Security

The World Customs Organization (WCO) reports that in a recent meeting with Administrator Pistole of the Transportation Security Administration (TSA), Pistole emphasized the cooperative approach the global Customs and Transport community can play in securing global economies from critical disruptions. WCO Secretary General Mikuriya and Administrator Pistole later discussed how Customs and Transport authorities can work collaboratively in tangible ways to maximize air cargo security in the global supply chain. WCO notice:

<http://www.wcoomd.org/press/?v=1&lid=1&cid=8&id=254>



WTO Rules Against United States AD/CVD Duties on Chinese Products

The World Trade Organization's Appellate Body (AB) reversed several findings of an October 2010 panel report on U.S. "double counting" of antidumping and countervailing duties (AD/CV) on four products from China:

- 1) certain new pneumatic off-the-road tires,
- 2) laminated woven sacks,
- 3) circular welded pipe, and
- 4) light-walled rectangular pipe and tube (DS379).

The U.S. Trade Representative (USTR) issued a statement expressing strong disappointment in the ruling. According to USTR, the WTO Dispute Settlement Body (DSB) is expected to adopt the AB report and the panel report by this April. Under WTO rules, once a panel report or AB report is adopted, the party concerned has to notify its intentions with respect to implementation of adopted recommendations. If it is impracticable to comply immediately, the party concerned is given a reasonable period of time, the latter to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption.

In any event, the DSB will keep the implementation under regular surveillance until the issue is resolved. The Appellate Body has now agreed with China on several points and reversed some of the panel's October 2010 findings. In reversing these findings, the AB now finds that the following Commerce Department practices are inconsistent with the Subsidies and Countervailing Measures Agreement (SCM Agreement) (partial list):

- imposition of double remedies (i.e., the offsetting of the same subsidization twice by the concurrent imposition of AD duties calculated on the basis of an NME methodology and CV duties); and
- determination that certain Chinese state-owned enterprises (SOEs) are "public bodies."
- Upholds Earlier Rulings on State-Owned Banks, Specific Subsidies, Etc.

(Continued below)

- The Appellate Body also upheld certain of the panel's findings, including findings that the following Commerce practices were consistent with U.S. WTO obligations:
 - "public body" determinations with respect to certain state-owned commercial banks (SOCBs);
 - use of benchmarks from outside of China to measure the "benefit" of certain subsidies (though the AB found that the panel failed to properly analyze the benchmark Commerce used to measure the benefit of government-provided loans); and
 - its determination that certain subsidies were "specific" to a particular industry.

In August 2010, the Court of International Trade (CIT) also rejected Commerce's approach to combined AD and CV duty tariffs on imports from non-market economies, and ordered the agency to forego imposing CV duties on off-the-road (OTR) tires from China (one of the four products at issue in the WTO dispute). However, the court denied a motion by Chinese producers of OTR who sought an injunction to lift the CV duty deposits based on this August 2010 finding, citing the unsettled state of the law, a pending appeal by the government, and lack of irreparable harm. As reported, USTR Kirk issued a statement on the findings stating that he was "deeply troubled" by the report, which he said "appears to be a clear case of overreaching by the Appellate Body." Kirk added that his office is reviewing the findings closely in order to understand fully their implications and will work with Commerce to determine the appropriate response to the adverse findings. USTR press release (03/11/11)

<http://www.ustr.gov/about-us/press-office/press-releases/2011/march/ustr-statement-regarding-wto-appellate-body-report-c>

WTO press release:

http://www.wto.org/english/news_e/news11_e/379abr_e.htm

Commerce Testifies on Export's Critical Role for Job Creation

Francisco Sánchez, Under Secretary of Commerce for International Trade, recently testified how expanding exports leads to an increased demand for American made products. Sánchez told the House Energy and Commerce's Subcommittee on Commerce, Manufacturing, and Trade, that "great opportunities lie in the vast global market. Today, 95 percent of the world's customers live outside our borders. The International Monetary Fund forecasts that 83 percent of world economic growth during the next five years will happen outside of the U.S.

The nations of the world are giving rise to a new global middle class of consumers that can be the new marketplace for American goods and services." He cited the current export environment for its positive growth. "Through the National Export Initiative (NEI), and its goal of doubling U.S. exports by 2015, we will support millions of jobs here at home. Already, U.S. companies are taking advantage of the international marketplace at historic levels. U.S. exports of goods and services in 2010 representing \$1.83 trillion increased nearly 17 percent over 2009 -- the largest year-to-year percent increase in more than 20 years." He noted, "as we search for ways to create jobs for American workers, increasing our nation's exports must be an important tool in our toolbox." According to the Undersecretary, the NEI, which is the United States' first Presidential-led, government-wide export promotion strategy, is a significant step in the right direction for our American workers and companies.

www.ncbfaa.org (3/21/11)



Export.Gov Posts Upcoming Domestic and International Trade Shows

[Export.gov](http://www.export.gov) announced a series of domestic and international trade shows that are scheduled for 2011.

Domestic Trade Shows May 2011

- May 2-5, 2011 - Offshore Technology Conference 2011 Houston, TX
- May 3-5, 2011 - National Hardware Show 2011 Las Vegas, NV
- May 9-12, 2011 - Waste Expo 2011 Dallas, TX
- May 10-12, 2011 - Electric Power 2011 Rosemont, IL
- May 21-25, 2011 - International Pow Wow 2011 San Francisco, CA
- May 21-24, 2011 - National Restaurant & Hotel Show Chicago, IL
- May 22-25, 2011 - WINDPOWER 2011 Anaheim, CA

International Trade Shows - May 2011

The following international trade shows are scheduled for March 2011 through May 2011:

- April 4-8, 2011 - Hannover Messe 2011 Hannover, Germany
- April 7-9, 2011 - China Refrigeration 2011 Shanghai, China
- April 12-14, 2011 - Exposeguridad Mexico 2011 Mexico City, Mexico
- April 12-15, 2011 - LAAD 2011 - Latin America Aerospace & Defense Rio de Janeiro, Brazil
- April 13-15, 2011 - 7th Int'l Congress & Exhibition for EE & RESSofia Bulgaria
- April 13-15, 2011 - InfoComm China 2011 Beijing, China
- April 14-17, 2011 - China International Boat Show 2011 Shanghai, China
- April 18-21, 2011 - China Int'l Medical Equipment Fair (CMEF) 2011 Shenzhen (tbc), China
- April 19-21, 2011 - Infosecurity Europe 2011 London, UK
- April 20-22, 2011 - Secutech 2011 Taipei, Taiwan

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- May 2-5, 2011 - Wasser Berlin International 2011 Berlin, Germany
 - May 4-7, 2011 - Made in America 2011 Beirut, Lebanon
 - May 4-6, 2011 - Solarexpo & Greenbuilding Verona, Italy
 - May 5-7, 2011 - IFAT China + EPTEE + CWS 2011 Shanghai, China
 - May 9-13, 2011 - CTO 2011 Lagos, Nigeria
 - May 10-12, 2011 - AWS Weldmex-Fabtech-Metalform, Mexico 2011 Monterrey, Mexico
 - May 10-13, 2011 - IDEF 2011- 10th Int'l Defense Industry Fair Buyukcekmece, Istanbul, Turkey
 - May 11-13, 2011 - Asia Funeral Expo 2011 Hong Kong
 - May 12-14, 2011 - Australian Automotive Aftermarket Expo 2011 Melbourne, Australia
 - May 12-15, 2011 - Zoomark International 2011 Bologna, Italy
 - May 16-19, 2011 - IFSEC UK 2011 Birmingham, UK
 - May 17-20, 2011 - China Plas 2011 Guangzhou, China
 - May 17-20, 2011 - Nampo Harvest Day 2011 Bothaville, South Africa
 - May 24-27, 2011 - Hospitalar 2011 Sao Paulo, Brazil
 - May 24-26, 2011 - PULIRE 2011 Verona, Italy
 - May 24-26, 2011 - TECHTEXTIL 2011 Messe Frankfurt, Germany
 - May 25-29, 2011 - AUTOPROMOTEC 2011 Bologna, Italy
- Export.gov's list of upcoming 2011 domestic trade shows:
http://www.export.gov/eac/show_short_trade_events.asp?CountryName=null&StateName=null&IndustryName=null&TypeName=U.S.%20Trade%20Fair&StartDate=null&EndDate=null
- Export.gov's list of upcoming 2011 international trade shows:
http://www.export.gov/eac/show_short_trade_events.asp?CountryName=null&StateName=null&IndustryName=null&TypeName=International%20Trade%20Fair&StartDate=null&EndDate=null

FDA Issues Import Alert on Food Products from Japan

On 03/24/11, the Food and Drug Administration revised Import Alert #99-33 on the detention without physical examination of certain milk, fruit, vegetables, and baby formula from Japan in order to add more vegetables and milk from specific prefectures. As reported, on 3/23/11, the Japanese Prime Minister ordered the addition of flowerhead brassicas, head leafy vegetables, and non-head leafy vegetables to the group of products previously restricted from distribution into the market on 03/21/11. The Governor of the Ibaraki prefecture was also ordered to stop the distribution of raw milk and fresh parsley. This means no such products may lawfully be placed in the domestic or export markets. FDA notes, this is in addition to Japan's 03/21/11 announcement ordering the Governors of the affected prefectures of Fukushima, Gunma, Ibaraki, and Tochigi to stop the domestic distribution and export of spinach and kakina (a local Japanese vegetable) into the market, and ordered the Governor of Fukushima prefecture to stop the distribution and export of raw milk. Based on this additional announcement by Japan, FDA states that the following additional products may be detained without physical examination and be subject to refusal of admission into the U.S.:

1. head type leafy vegetables (i.e. Spinach, Lettuce, Celery, Cress, Endive, Escarole, Chard, and Collards) from the Fukushima prefecture;
2. non-head type leafy vegetables (i.e. turnip), flower head brassicas (i.e. broccoli and cauliflower) from the Fukushima prefecture; and
3. milk from the Ibaraki Prefecture.

Note that the original import alert also stated that the products banned from domestic consumption and export by Japan on 03/21/11 "may" be detained and "may" be subject to refused admission; however, FDA's question and answer document on the topic later said such products "will be" detained and "will be" refused admission into the U.S.

(Continued above)

According to U.S. Customs and Border Protection (CBP), as a result of this increased surveillance, importers can expect FDA to conduct many more document reviews for Japanese shipments and can expect examinations and sample collections at a much higher rate than usual. FDA Districts may be asking for additional information related to regions where products originate and to the date of shipment from that region. Importers are advised that it may speed FDA's review process if entry documentation is provided in a timely manner and, for those shipments indicated for examination or sampling, if location and availability information is provided in a timely manner. FDA reported that it and the Japanese government would continue to collaborate to ensure products from the affected prefectures do not pose a health risk to U.S. consumers. FDA will continue monitoring the potential for public health risks due to possible radionuclide contamination and, when appropriate, will remove the Import Alert and resume routine coverage of entries. FDA warns that though radioactive iodine has a short half-life of about 8 days and decays naturally within a matter of weeks, there is a risk to human health if radioactive iodine in food is absorbed into the human body. If ingested, it can accumulate in and cause damage to the thyroid. Children and young people are particularly at risk of thyroid damage due to the ingestion of radioactive iodine.

FDA Q&A, updated 03/23/11:

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm247403.htm>

CBP CSMS message #11-000071 (03/23/11)
http://apps.cbp.gov/csms/viewmssg.asp?Recid=18310&page=&srch_argv=11-000071&srctype=all&btype=&sortby=&sb

FDA Import Alert:

http://www.accessdata.fda.gov/cms_ia/importalert_621.html



Amendment To The ITAR

(See Federal Register
Notice 76FR10291 For More
Information)

Electronic Payment of Registration Fees; 60-Day
Notice of the Proposed Statement of
Registration Information Collection

AGENCY: Department of State.

ACTION: Proposed rule and information
collection; request for comments.

SUMMARY: The Department of State is
proposing to amend the International
Traffic in Arms Regulations (ITAR) to
change the method of payment to
electronic submission of registration
fees. Definitions for "Foreign
Ownership" and "Foreign Control" are to
be added. Pursuant to the Paperwork
Reduction Act, public comment is
requested on the Statement of
Registration, the form used for the
submission of the registration fee.

DATES: The Department of State will
accept comments on this proposed rule
until April 25, 2011.

Email:
DDTCResponseTeam@state.gov with the
subject line, "Electronic Payment of
Registration Fees."

FOR FURTHER INFORMATION CONTACT: Lisa
V. Studtmann, Director, Office of Defense Trade
Controls Compliance.

SUPPLEMENTARY INFORMATION: The
collection of electronic payments will simplify the
collection and verification of payments, eliminate the
need to manually process and collect returned
payments, and eliminate the possibility of lost
payments.

The form used for obtaining registration, the DS-
2032 (Statement of Registration), has been revised
to reflect that fee payments are to be made
electronically. Additionally, the certifications
previously required through the transmittal letter
referenced in § 122.2(b) of the ITAR have been
incorporated into the revised DS-2032

White House Posts IPR Enforcement Commissioner White Paper

The Administration's Intellectual Property
Enforcement Coordinator (IPEC), Victoria
Espinel, recently issued a White Paper
containing 20 legislative recommendations to
Congress, designed to improve the ability of
U.S. Customs and Border Protection (CBP) and
other agencies to enforce intellectual property
rights (IPR) and impose penalties. According
to IPEC Espinel, she looks forward to working
with Congress in the months ahead to
consider and pass the Administration's
legislation recommendations, which include
the following:

Strengthen CBP's administrative penalty
authority to:

- Permit relief when someone
who unknowingly and unintentionally
acquires infringing products
voluntarily discloses them to CBP
before becoming aware of any CBP
enforcement action (or a law
enforcement investigation);
- Give CBP authority to issue
penalties for infringing exports; and
- Strengthen CBP's authority to
issue penalties for infringing imports
discovered during audits of company
records.

Strengthen agency tools for combating
infringement to:

- Ensure that, in appropriate
circumstances, infringement by
streaming, or by means of other
similar new technology, is a felony;
- Authorize DHS (including its
component CBP) to share pre-
seizure information about, and
samples of, products and devices
with rightholders to help DHS to
determine whether the products are
infringing or the devices are
circumvention devices; and
- Give law enforcement wiretap
authority for criminal copyright and
trademark offenses.

(Continued below)

Expand DHS ability to share information about enforcement activities with rightholders to:

- Give DHS authority to notify rightholders that infringing goods have been excluded or seized pursuant to an International Trade Commission order; and
- Give DHS authority to share information about, and samples of, circumvention devices with rightholders post-seizure.

Direct the U.S. Sentencing Commission to:

- increase the U.S. Sentencing Guideline range for intellectual property offenses;
- require the Sentencing Commission to consider five specific categories of changes to the Guidelines; and
- require the Sentencing Commission to act within 180 days of such legislation being adopted (including issuing a report explaining why it has not adopted any of the specific recommendations).

The five categories of recommendations are:

1. Increase the Guideline range for the theft of trade secrets and economic espionage, including trade secrets transferred or attempted to be transferred outside of the U.S. ;
2. Increase the Guideline range when infringing products are knowingly sold for use in national defense, national security, critical infrastructure, or by law enforcement.
3. Increase the Guideline range for intellectual property offenses committed by organized criminal enterprises/gangs;
4. Increase the Guideline range for intellectual property offenses that risk death or serious bodily injury and for those offenses involving counterfeit drugs (even when those offenses do not present that risk); and
5. Increase the Guideline range for repeat intellectual property offenders.

Increase the maximum sentence for the following offenses to:

- economic espionage (18 U.S.C. 1831) from 15 years in prison to at least 20 years in prison; and

(Continued above)

- drug offenses under the Federal Food, Drug and Cosmetic Act (FFDCA), particularly for counterfeit drug offenses.

- Improving Efforts to Fight Illegal Drugs, Especially Counterfeit Drugs

- Improve the ability to fight illegal drugs, particularly counterfeit drugs to:

- Require importers and manufacturers to notify the FDA and other relevant agencies when they discover counterfeit drugs, including the known potential health risks;

- Extend the Ryan Haight Act's definition of "valid prescription" (and its telemedicine exemption) to the FFDCA to drugs that do not contain controlled substances;

- Adopt a track-and-trace system for pharmaceuticals and related products;

- Provide civil and criminal forfeiture under the FFDCA, particularly for counterfeit drug offenses;

- As noted above, increase the statutory maximum for drug offenses under the FFDCA, particularly for counterfeit drug offenses; and

- As noted above, recommend that the U.S. Sentencing Commission increase the Guideline range for intellectual property offenses that risk death and serious bodily injury, and for those offenses involving counterfeit drugs (even when those offenses do not present that risk).

IPEC Espinel notes that as the Administration continues to implement the Joint Strategic Plan, it will likely make additional legislative recommendations in the coming months.

White House blog entry:

<http://www.whitehouse.gov/blog/2011/03/15/concrete-steps-congress-can-take-protect-americas-intellectual-property>

IPEC White Paper:

http://www.whitehouse.gov/sites/default/files/ip_w_hite_paper.pdf

Information available at

http://www.whitehouse.gov/sites/default/files/ip_w_hite_paper.pdf

APEC Posts Details of 2011 Priorities for Trade and Regulatory Cooperation

Details of the March meeting of senior officials' of the 21 members of the Asia-Pacific Economic Cooperation (APEC) forum have been posted. The officials discussed economic integration, trade expansion, promoting green growth and regulatory cooperation. According to Senior White House official Michael Froman who opened the meeting, the U.S. sees its 2011 host year of APEC as a time to reaffirm and strengthen the U.S.' ongoing commitment to the Asia-Pacific – in particular, its economic engagement with economies throughout the region. Froman announced that the U.S. wants to build towards the goal of a "seamless regional economy" that produces economic growth, employment, and prosperity across the Asia-Pacific region. To that end, the U.S. has identified three specific priority areas for 2011:

1. Expanding trade, FTA - strengthening regional economic integration and expanding trade, including by working to define, shape, and address the next-generation trade and investment issues that should be included in 21st century trade agreements in the region, including a Free Trade Area of the Asia-Pacific (FTAAP).
2. Promoting green growth - advance existing APEC work in support of the global climate change negotiations, energy efficiency, and other areas by agreeing to take specific actions to promote green growth and help its economies make a successful transition to a clean energy future.
3. Regulatory cooperation - pushing forward practical, concrete outcomes related to regulatory convergence and cooperation.

In addition, Froman noted that the U.S. would like to work with APEC leaders to better integrate the input of the private sector into APEC's work.

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Therefore, throughout 2011, the U.S. plans to hold multiple private sector-led activities on topics ranging from energy and transportation to innovation and trade, food security, and women's entrepreneurship that will allow APEC officials to draw upon recommendations from industry and other stakeholders when developing initiatives and outcomes. The U.S. also wants to intensify efforts to streamline and strengthen the way APEC does business. All activities, from high-level to technical-level events, should focus on solving problems and achieving clear, meaningful progress towards APEC goals.

According to the Office of the U.S. Trade Representative (USTR), the APEC leaders' meeting saw progress on some of the goals outlined by Mr. Froman. According to the USTR, the U.S. will look to further advance all these issues during the next set of APEC Senior Officials meetings, which will lead up to the APEC 2011 Trade Ministers Meeting, in May in Big Sky, Montana, hosted by USTR Kirk.

USTR press release (03/13/11)

<http://www.ustr.gov/about-us/press-office/press-releases/2011/march/apec-launches-2011-efforts-toward-creating-seamless>

APEC press release:

http://www.apec.org/en/Press/News-Releases/2011/0312_seamless_economy.aspx

CPSC Issues Press Release on Public Database - The First reports to be Viewable in April

The Consumer Product Safety Commission (CPSC) officially launched its controversial new public database of product safety incidents that was required by the Consumer Product Safety Improvement Act of 2008 on 3/11/11. According to CPSC, the new "[SaferProducts.gov](http://www.saferproducts.gov)" database, which is being launched on time and on budget, allows consumers to submit reports of harm or risks of harm and to search for safety information on products. Manufacturer (including importer) statements on the reports of harm will also be available. CPSC notes that under the procedures set up by the CPSIA, CPSC will review all online reports of harm and have five business days to transmit qualifying reports to the manufacturer, where practicable.

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Manufacturers then have 10 business days during which they may respond and provide comments and/or claims. At the end of the 10-day period, if all requirements are met, the report of harm and the manufacturer's comments will both be posted on [SaferProducts.gov](http://www.saferproducts.gov). On 01/24/11, CPSC began registering businesses online during its "soft launch" of the database and accepting reports through [SaferProducts.gov](http://www.saferproducts.gov) to test the system. Since then, about 1500 reports have been filed by consumers online. About 1400 manufacturers have signed up on the Business Portal, so they can receive a copy of a report about their product in a timely manner via e-mail. Reports of harm during the soft launch test period will not be visible to the public but are being processed internally by CPSC as has been done with all reports in the past. However, reports of harm that are submitted from now on should be visible and searchable in the system around April 2011. CPSC Commissioner Nord of the posted a blog describing some of the over 100 glitches that she says emerged during the six week soft launch of CPSC's public database of consumer product safety incidents. She reported that as some of these problems will take weeks to months to sort out, the database is not ready for "prime time," despite the March launch date. The problems range from technical to conceptual.

CPSC notice:

<http://www.cpsc.gov/cpscpub/prerel/prhtml11/11168.html>

CPSC public database- [SaferProducts.gov](http://www.saferproducts.gov):

<http://www.saferproducts.gov/>

GAO Issues Report to Congress on the Cost of Freight Shipping - Trucking Most Expensive to Society

The Government Accountability Office (GAO) issued a report comparing the costs of road, rail, and waterways freight shipments that are not passed on to consumers but are borne by society. GAO determined that freight service provided by trucks generate significantly more costs to society than when the same freight service is provided by rail or water. According to the report, additional freight service provided by trucks generated significantly more costs not passed on to consumers than the same amount of freight service provided by either rail or water.

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GAO estimates that such freight trucking costs not passed on to consumers were at least 6 times greater than rail costs and at least 9 times greater than waterways costs per million ton-miles of freight transport. GAO notes that most of these costs were external costs imposed on society in the form of congestion, pollution, accidents, etc. In addition, GAO found that public infrastructure costs were only significant for trucking services. GAO reports that road, rail, and waterway freight transportation is vital to the nation's economy. Government tax, regulatory, and infrastructure investment policies can promote economic efficiency in the freight transportation sector when they result in prices that reflect all marginal costs (private costs, public costs such as infrastructure maintenance, and external costs). GAO notes that when prices do not reflect all these costs if, for example, the government does not recoup all the costs of that mode's use of infrastructure, then one mode may have a cost advantage over the others that will distort competition. As a consequence, the nation could devote more resources than needed to higher cost freight modes, which could distort shipping prices and customers' use of freight modes and reduce the overall efficiency of the nation's economy. According to GAO, while freight costs are not fully passed on to consumers across all modes, a number of issues are important to consider when proposing policy changes. Policy changes that align prices with marginal costs on a shipment-by-shipment basis would provide the greatest economic benefit, but could result in high administrative costs. GAO reported that less targeted changes, such as charging user fees based on average costs, subsidizing more efficient alternatives, or applying safety or emissions regulations, could change the overall distribution of freight moved across modes, but may provide fewer benefits.

GAO report:

<http://www.gao.gov/new.items/d11134.pdf>

EU Issues Annual Report on Trade Barriers Affecting The EU - Concerned with United States 100% Scanning and Public Procurement Rules

The European Commission published its first annual report to the European Council on trade and investment barriers for EU companies in EU strategic partner countries (the U.S., China, India, Russia, Japan, Brazil, and Argentina). The EC reports it is determined to make trade barrier removal in third country markets a corner-stone of its trade relationships. Its main trade policy challenge with strategic partners is not primarily in cutting tariffs, but in overcoming regulatory barriers, gaining better market access for services and investment, opening public procurement markets, better protecting and enforcing intellectual property rights (IPR) protection, and tackling unjustified barriers hampering the supply of raw materials. EU exports potentially affected by such measures were 9-12% of EU's total exports in 2009. Solving these barriers would have a significant impact on EU exports the EC noted. According to the report, given low average tariffs (under 3%), the key to unlocking the large potential of EU-U.S. transatlantic trade lies in tackling non-tariff barriers (NTB). As reported, the biggest NTB obstacles to fostering this potential lie in the divergence of standards and regulations across the Atlantic, such as in government procurement markets and in imports screening initiatives. The report states that due to the limited scope of government procurement agreements (GPAs) made by the U.S., there is a low level of openness of U.S. government procurement markets to EU bidders. The EC notes that the "Buy American" initiative has further limited effective access to U.S. public procurement markets in areas not covered by U.S. GPA commitments through new discriminatory provisions included in the American Economic Recovery and Reinvestment Act (AERRA) and similar legislation.

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Such provisions have created uncertainty for foreign operators in the U.S. and effectively exclude them from certain tenders, mainly in the construction sector. Additionally, the prohibition of U.S. government purchases from inverted companies (originally U.S. companies that change tax jurisdiction and invert to another country's tax system) is also harmful to EU companies. In addition, the EC advised that another barrier potentially having a significant economic and practical impact on EU exports to the U.S. are its 100% scanning provisions. These provisions aim to enhance security by countering potential terrorist threats to the international maritime container trade system by performing 100% scanning of containers before arrival in U.S. ports of all U.S.-bound containers by 07/01/12. According to the report, the repercussions from these provisions would act as a serious hindrance to EU-U.S. trade. The EC notes that while progress has recently been achieved towards the U.S. recognition of the concept of "authorized economic operator" in the Transatlantic Economic Council (TEC) discussions, the EU will have to continue to closely monitor further developments on this barrier. According to the EC, joint efforts are needed at all levels of EU member states to convey concerted messages to their strategic partners underlining the importance for their bilateral relationship of solving the barriers listed in this report. The EC notes that they already have a number of specific high-level forums with some of the EU's strategic partners, such as the TEC with the U.S., the High Level Economic and Trade Dialog with China, or the High Level Group with Japan. The report concludes that while market access and notably regulatory barriers play an important role in these forums, the EU will also have to be ready, where appropriate, to raise market access barriers at Summits and other top level meetings. Additional highlights from the report include EU difficulties with Chinese and Russian markets when exporting IP-protected goods and services; restrictions on export of raw materials imposed by Argentina, Brazil, China, India and Russia; and customs-related barriers imposed by Russian customs and the Argentinean import licensing system. EC notice:

http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147629.pdf