



EIB World Trade Headlines

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August 2012 - Vol 4 Issue 16

State Dept Posts Comments on Proposed Revision of USML Cat X

The State Department's Defense Directorate of Trade Controls (DDTC) posted comments it received in response to its proposed rule to amend Category X (personal protective equipment and shelters) of the U.S. Munitions List (USML). Companies and organizations that submitted comments covered the following issues:

- Doubtful jurisdiction between the Commerce Control List (CCL) and the USML;
- Omissions of Wassenaar Arrangement controls;
- Proposed USML control of goggles, spectacles or visors (commenter felt would capture many commercial safety goggles);
- A lack of clear treatment for printed boards and their designs;
- Control of parts and components (which one commenter suggested should mostly be decontrolled or eligible for a Bureau of Industry and Security (BIS) express license);
- Difficulty using the International Traffic in Arms Regulations (ITAR) 123.17 exception for export of personal protective equipment in light of Defense Department and U.S. Customs and Border Protection (CBP) requirements;
- Control of shelters.

DDTC notice:

http://www.pmdtcc.state.gov/regulations_laws/documents/proposed_rules/CategoryX_Comments.pdf

Newsletter Notes:

- State Dept. Posts Comments
- German Customs Seizes
- CBP Posts Information on Miami Forum
- FDA Issues FR Notice Amending
- CBP Bulletin 8/1/12
- CBP Post Trade Account
- Japan Posts Notice of Extension
- ITA Issues FR Notice Requesting
- EU posts notice on the Operational Start
- Congress Working on Bills Opposing
- FDA Issues FR Notice on Fees
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- EPA Issues FR Notice
- ITA posts comments on proposed Export
- Commerce Report shows
- Ex-Im Bank Talks about Financing
- BIS Posts Information on Company
- Defense Dept Posts Comments on ITAR
- ECHA Posts Regulations
- ITA Issues FR Notice
- Japan Posts Information
- President Signs Bill to Expand
- International Chamber of Commerce
- HMSA Issues Proposed Rule
- Panama FTA Implementation

German Customs Seizes Military Airplane Engines from Russia

German customs have seized two shipments of military airplane engines from Russia on the grounds that they violate the country's stringent arms trading rules, a news report said Sunday.

Customs stopped the shipment of four turboprop engines for Tu-142 reconnaissance aircraft destined for India and a shipment of MiG-29 fighter jet engines en route to Algeria because they lacked the necessary permits, the weekly news magazine Spiegel reported.

The Tupolev engines, discovered at Hahn airport in the state of Rhineland-Palatinate, are worth \$3.3 million, the report said, citing no one. The MiG engines were stopped at Leipzig airport after being serviced in Russia, according to the report, which gave no information on their number or value.

The Indian navy has eight Tu-142 aircraft as part of its maritime surveillance fleet. The large four-engine plane is based on the Tu-95 strategic bomber.

Algeria has more than 30 MiG-29 jets as part of an \$8 billion arms deal with Moscow. However, the country famously sent back 15 planes in 2008, citing quality problems.

[Read more:](#)

<http://www.themoscowtimes.com/news/article/germany-seizes-russian-military-plane-engines/466440.html#ixzz23RVTKpQM> [The Moscow Times](#)

CBP Posts Information on Miami Forum on Trade Intelligence Pilot

U.S. Customs and Border Protection (CBP) scheduled a Trade Intelligence forum on 08/29/12 in Miami. CBP advises the forum will allow importers to assist in CBP's efforts to stamp out fraudulent competitors. The Trade Intelligence pilot under development by CBP intends to create a formal process for the trade and domestic industry to provide Centers for Excellence and Expertise (CEE) and other CBP offices with up-to-the-minute information on industry trends, issues that may impact CBP processing, enforcement and targeting, and specific allegations of fraud or malfeasance.

[Forum registration: http://bit.ly/M5Zqfg](http://bit.ly/M5Zqfg)

[CBP Message:](#)

http://apps.cbp.gov/csms/viewmssg.asp?Recid=18868&page=&srch_argv=12-000290&srctype=all&btv=&sortby=&sby

FDA Issues FR Notice Amending Regulations to Require Medical Device Importers to Participate in Electronic Registration

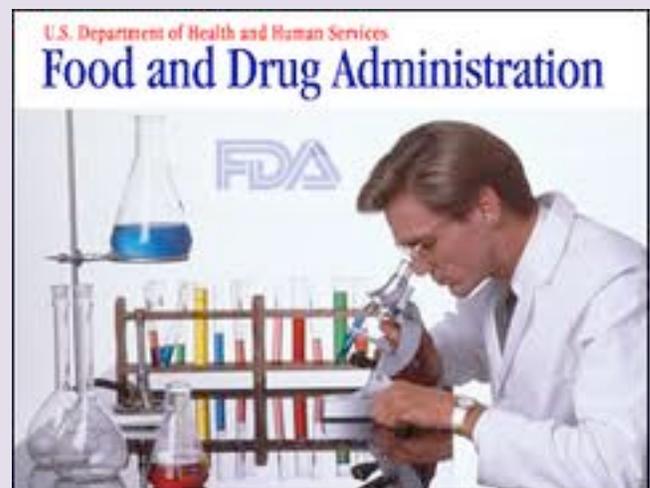
Recently the Food and Drug Administration (FDA) is amending its regulations to comply with statutory amendments to the device registration and listing provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA advises the change would facilitate FDA's collection of additional registration information from foreign establishments as required by the Public Health Security and Bioterrorism Preparedness and Response Act and update rules to improve the quality of registration and listing information available to FDA.

FDA has developed a system that makes the electronic receipt of device registration and listing information feasible. This final rule updates the regulations to require that registration and listing information be provided to FDA electronically unless FDA grants a request for a waiver. According to FDA, it believes this electronic system will ultimately make the process of submitting registration and listing information for devices more efficient for industry and will provide faster access to this information for the FDA and industry, and will allow FDA to more effectively gather information about marketed devices. Each owner or operator is to establish an account on FDA's online device establishment registration and device listing system, FURLS, which will be used to create and update their device establishment registration and device listing information. FDA notes, information submitted to FDA prior to 09/15/07, has already been migrated to the new FURLS electronic database. There is no need to reenter this information.

FDA contact: Ann Ferriter, 301-796-5686.

[FDA FR Notice http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/pdf/2012-18764.pdf](http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/pdf/2012-18764.pdf)

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CBP Bulletin 8/1/12 - Terracotta Grills, Polyurethane, & Insulating Materials

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 46, No. 32); CBP is:

- revoking a ruling on the classification of terracotta grills;
- proposing to revoke a ruling on the classification of polyethylene; and
- proposing to revoke a ruling on the classification of insulating mineral materials.

This notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP cautions that an importer's failure to advise CBP of such rulings, decisions, or substantially identical transactions may raise issues of reasonable care on the part of the importer or its agent. CBP advises before taking these proposed actions, consideration will be given to any written comments received by 08/31/12.

Terracotta Grills - by weight, its materials consist of 90% terracotta (frame/base) and 10% stainless steel (grill). CBP advises that it has consistently interpreted the phrase "household articles" to include items which are used outdoors in the immediate vicinity of the home, such as a key concealing case, cooler, stones for a garden or pathway, etc. Therefore, it follows that by application of General Rule of Interpretation 1, the terracotta grill, which is a ceramic product intended for backyard cooking, falls within the scope of "other household articles" for purposes of classification under heading 6912. As such, the terracotta grill is precluded from classification under heading 6914, which is a basket provision covering ceramic articles that are not provided for in any other heading of Chapter 69.

- Old HTS/Rate: 6914.90.80, 5.6% (Other ceramic articles)
- New HTS/Rate: 6912.00.50, 6% (Other household articles other than of porcelain or china)
- New Ruling: HQ H141335 (dated 07/13/12), revokes NY N025431 (dated 2008)

Ultralube D-806 - A linear low density polyethylene, consisting of a mixture of 50% linear low density Polyethylene, 40% Water, 6% Oxidized Polyethylene, 4% Ethoxylated alcohols. It's described by the manufacturer as being used as a polish, straight out of the container, by Chinese leather manufacturers who use the material for the Bianchini effect of toning (a whitening effect) the look of the leather and for soft feel properties. CBP previously described the product as a wax additive used in aqueous coatings such as water based printing inks to improve the surface qualities of the coating, ink and lacquers. Keim-Additec Surface challenged the description saying it was better described as a "polish."

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CBP disagreed, saying "the product is sold in large volumes (120 kg drums and 1000 kg intermediate bulk containers), which, along with statements in the product data sheets, show that the product is added directly to the formulation of other products during a manufacturing process, rather than used straight out of the container as a leather polish, as you suggest." CBP advises that they did change the classification based on viscosity calculations using a Material Safety Data Sheet submitted by Keim-Additec, finding a relative viscosity over 1.44.

- Current: 3901.10.5010, 6.5% (Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of less than 0.94: Other.)
- Proposed: 3901.20.10, 6.5% (Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of 0.94 or greater: Having a relative viscosity of 1.44 or more.)
- Proposed for revocation: NY N063739 (2009)
- Proposed new ruling: HQ H080820

Insulating Mineral Materials - An article of insulating mineral materials used in a gas turbine engine to protect the rear turbine support hub from excessive heat produced by the turbine. Ceramic fiber (mineral wool) pads encapsulated in one-inch woven textile squares covered with an outer cladding of stainless steel. According to CBP, laboratory analysis of the article reveals that the mineral insulating fibers (mineral wool) predominate in the article, and the mineral insulating fibers are indispensable to the primary use and purpose of the article, which is to protect a rear turbine support hub from excessive heat produced by the turbine. The previous classification requires that the mineral wool be imported in bulk, sheets, or rolls. CBP now finds article is in the shape of a ring with a large hole in its middle and thus can't be described as a "sheet."

- Current: 6806.10.10, 3.9% (Slag wool, rock wool and similar mineral wools (including intermixtures thereof) in bulk, sheets or rolls.)
- Proposed: 6806.90.00, Free (Slag wool, rock wool and similar mineral wools ...: Other.)
- Proposed for revocation: NY N125656 (2010)
- Proposed new ruling: HQ H146056:

[CBP Bulletin \(8/2/12\)](http://www.cbp.gov/xp/cgov/trade/legal/bulletins_de)

http://www.cbp.gov/xp/cgov/trade/legal/bulletins_de/cisions/bulletins_2012/vol46_08012012_no32/



CBP post Trade Account Owner Issue - Expansion of Export Manifest Pilot, Simplified Entry Progress

U.S. Customs and Border Protection (CBP) is significantly expanding the Document Image System (DIS) Automated Export Manifest pilot to additional participants and ports, the agency announced in an ACE Trade Account Owner (TAO) July update. The pilot, which is taking place at the Atlanta field office and includes the ports of Norfolk, Newport News, Wilmington, Beaufort, Morehead City, Georgetown, Charleston, Savannah and Brunswick, will be expanded to the rest of the country in three phases, according to CBP.

The three phases are:

- Phase I – All Florida and Gulf Ports of export to Brownsville, Texas, including Puerto Rico -- Late July - early August.
- Phase II – All ports from Baltimore north including the Great Lakes to Chicago-- Late August.
- Phase III – The entire West Coast including Hawaii and Alaska -- Late August –early September.

CBP also posted an updated set of frequently asked questions on DIS at:

http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/dis_qa.ctt/dis_qa.pdf

Clarification of PTT 356 Error Message - CBP advises if there's an invalid bond error message for a Permit to Transfer (PTT) submission for a move to a Foreign Trade Zone (FTZ) facility, and this move is to be on the Zone Operator's bond, the following must be confirmed:

- the Importer of Record (IOR) number used in the PTT transmission is the IOR# of the FTZ Operator; and
- the IOR# is associated with an active Type 4 FTZ bond.

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CBP notes, normally only a bonded carrier or bonded cartman is allowed to move cargo on a PTT. The exception to this rule is that if the PTT is for a move to a foreign trade zone, the FTZ Operator may move the goods under his Type 4 FTZ Operator's bond.

Simplified Entry Progress - Plans for expansion of the Simplified Entry (SE) are moving forward. CBP is finalizing plans to expand to additional airports using a regional approach and will be issuing a second Federal Register notice to announce the expansion of the pilot to additional participants. CBP is looking for opportunities to add new functionality to the pilot including incorporation of the Participating Government Agency (PGA) Message Set and the use of the DIS. CBP also said it will allow non-automated warehouses and terminals to release cargo based on screen printouts from importers and brokers in order to support the ongoing SE pilot. The printout should have at a minimum the shipment ID and quantity being released, the type of release as well as clear identification of who presented the release information, noted CBP.

RLF/EIP Expansion - CBP will be deploying enhancements to the Electronic Invoice Program (EIP) and Remote Location Filing (RLF) programs in the fall. The updates will allow Antidumping (AD)/Countervailing (CVD) consumption entry summaries (Entry Type 03) to be filed in the Automated Commercial Environment (ACE). CBP advises the change will not apply to AD/CVD entry summaries filed in the Automated Commercial System (ACS). TAO July issue:

http://apps.cbp.gov/csms/docs/18865_1034829488/july_2012_TAO_Update_V4_.pdf

"If your ship doesn't come in, swim out to meet it!"

-Jonathan Winters



Japan Posts Notice of Extension of Punitive Duties against U.S. Imports Due to Byrd Amendment

Japan's Ministry of Economy, Trade and Industry (METI) recently announced it will extend Japan's countermeasures against the U.S. Byrd Amendment which was confirmed as being inconsistent with the WTO Agreements. The countermeasures were initiated against the U.S. in connection with the Byrd Amendment by imposing additional tariffs in September 2005 and they have been renewed six times to date. They were due to expire at the end of August 2012, but METI advised the U.S. continues to perform distribution that has been found to be illegal, so the government of Japan will formally decide at an upcoming cabinet meeting to extend the countermeasures by one year, with the current items and tariff rates changed. The extension was recommended 07/30/12 by the Council on Customs, Tariffs, Foreign Exchange and Other Transactions.

The U.S. repealed the Byrd Amendment in 2006, but the legislation contained transitional provisions saying duties on entries of goods filed before 10/01/07, will be subject to the distribution under the Byrd Amendment, so distributions continue. METI press release:
http://www.meti.go.jp/english/press/2012/0730_01.html

ITA Issues FR Notice Requesting Trade to List in Environmental Toolkit for Foreign Users

The International Trade Administration (ITA) is requesting comments by 08/17/12 from companies interested in being listed in the U.S. Environmental Solutions Toolkit. Specifically, the companies should be capable of exporting their goods or services relevant to:

1. groundwater remediation;
2. mercury emissions control from power plants;
3. emissions control from large marine diesel engines; and
4. nutrient removal from municipal wastewater.

The toolkit will be used by foreign environmental officials and foreign end-users of environmental technologies and will outline U.S. approaches to a series of environmental problems and highlight participating U.S. vendors of relevant U.S. technologies. Exporters interested in being listed on the toolkit website are encouraged to submit their company's name, website address, contact information, and environmental category of interest.

ITA FR Notice:

http://www.ofr.gov/OFRUpload/OFRData/2012-18589_PI.pdf

EU posts notice on the Operational Start of C-TPAT and AEO Mutual Recognition

The European Union recently issued the following trade-related release:

AEO/C-TPAT recognition now operational. On 05/04/12, the EU and U.S. agreed to mutually recognize the Authorized Economic Operator (AEO) and Customs-Trade Partnership Against Terrorism (C-TPAT) programs. As reported, the U.S. Customs and Border Protection (CBP) targeting systems can only grant benefits based on the information that is linked to a Manufacturer's Identification Number (MID), so there will be a "matching procedure" to associate the EU EORI (Economic Operators Registration and Identification) numbers with MID numbers. For this purpose, CBP has created a web application where EU AEOs must register their EORI number and associate this number with their MID number(s). The application will be activated once the exchange of relevant AEO data and testing is completed.

http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/infonote_aeo-ctpat.pdf

http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/trade_support_network/tsn_monthly/tsn_june2012.ctt/tsn_june2012.pdf

Congress working on bills opposing EU Airline Carbon Tax

U.S. pressure to reject the European Union's carbon tax on international airlines is mounting, with committees in both chambers of Congress approving bills blocking participation in the program. As reported, the Senate's rejection of the plan came on 7/31/12 as representatives from 16 opponents of the carbon tax, including China, Brazil and Russia, met in Washington to create an alternative to the program. The countries, however, failed to agree on a joint declaration during the United Nations' International Civil Aviation Organization (ICAO) meeting. The countries still have time to pitch an alternative to the EU plan. Although the rule kicked in on 01/01/12, airlines won't have to buy permits for carbon produced during entire flights, including over non-EU airspace, that land or take off from airports in the 27-nation bloc until 2013. Sen. John Thune, R-S.D., in a statement announced "Congress must act to protect America's sovereignty and ensure that U.S. operators and passengers are not penalized by this illegitimate tax."

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More than \$3.1 billion will be wrapped up in new taxes between 2012 and 2020 that could otherwise be invested in creating jobs and stimulating economic growth in our country. The Senate Commerce Committee's Aviation Operations, Safety and Security Subcommittee passed a bipartisan bill rejecting the EU plan, and the House's Transportation and Infrastructure Committee passed a similar measure in October. Department of Transportation (DOT) Secretary Ray LaHood also has railed against the tax, saying the EU should have worked with other countries more before creating the plan. www.joc.com (8/2/12)

FDA Issues FR Notice on Fees for Import and Facility Reinspections for FY 2013

The Food and Drug Administration (FDA) announced the fiscal year 2013 fees for import reinspections, domestic and foreign facility reinspections, and recall activities performed by FDA if a firm fails to comply with a mandatory recall order, all of which are mandated in the Federal Food, Drug, and Cosmetic Act (FD&C Act). As reported, the FY 2013 fees of \$221/hour for domestic services and \$289/hour if foreign travel is required are lower than the FY 2012 fees of \$224/hour and \$325/hour, respectively. The fees are effective 10/01/12

According to FDA, it will not send invoices for recall activity and foreign facility reinspection fees until it publishes a guidance to outline the process through which small businesses may request a fee reduction, although fees will be assessed at the fee level in effect at the time of the activity (unless fees are reduced). FDA likewise advised it has not sent invoices for any fees for such activities that took place in FY 2012, pending the small business guidance. In addition, FDA advised that fees for importer reinspections will not be assessed until certain issues are resolved and FDA notifies the public, but these FY 2013 fee rates will be used to determine any importer reinspection fees that may be assessed in FY 2013.

Comments on the fees are due by 10/31/12

FDA new frequently asked questions document on the fees: <http://www.fda.gov/Food/FoodSafety/FSMA/ucm257982.htm>

CBP Posts Recommendations from COAC on Improving PGA Protocol For Release of Cargo

Participating Government Agencies (PGAs) should look to CBP's protocol for processing holds and pauses as a way to improve the PGA process, noted the Advisory Committee On Commercial Operations (COAC) Trade Facilitation Subcommittee in a list of recommendations based of its first-ever trade survey. Survey respondents advised interactions with CBP on holds and pauses were far more favorable than dealing with PGAs. The subcommittee advises the process reviews could be performed through the Centers of Excellence and Expertise (CEEs). The list of recommendations was posted 08/10/12. CBP

[notice:http://www.cbp.gov/linkhandler/cgov/trade/trade_outreach/coac/coac_12_meetings/aug15_seattle/trade_subcommittee.ctt/trade_subcommittee.doc](http://www.cbp.gov/linkhandler/cgov/trade/trade_outreach/coac/coac_12_meetings/aug15_seattle/trade_subcommittee.ctt/trade_subcommittee.doc)

EPA Issues FR Notice Adding 25 Chemicals under TSCA, Will Affect Imports

The Environmental Protection Agency is proposing significant new use rules (SNURs) under the Toxic Substances Control Act for 25 chemical substances which were the subject of premanufacture notices, it advised in a recent Federal Register notice. The rules require those who intend to manufacture, import, or process any of these 25 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity, giving the EPA the opportunity to evaluate the intended use and, if necessary, to prohibit or limit it. The new rule is effective 10/15/12. Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of the SNURs must be received by 09/15/12. They should be submitted to docket EPA-HQ-OPPT-2012-0450, via <http://www.regulations.gov> or by mail to Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. Additional information: 202-554-1404 or TSCA-Hotline@epa.gov

[A list of the chemicals and the reason for the rule on each is available at:](#)

http://www.pdfdownload.org/pdf2html/pdf2html.php?url=http%3A%2F%2Fwww.ofr.gov%2FOFRUpload%2FOFRD%2F2012-20039_PI.pdf&images=yes

[EPA FR notice \(08/15/12\)](#)

http://www.pdfdownload.org/pdf2html/pdf2html.php?url=http%3A%2F%2Fwww.ofr.gov%2FOFRUpload%2FOFRD%2F2012-20039_PI.pdf&images=yes

ITA posts comments on proposed Export Promotion Fee Hike and affects on SMEs

The U.S. Chamber of Commerce recently posted comments on the International Trade Administration's (ITAs) 06/13/12 proposed rule to increase fees on U.S. Commercial Service export promotion services. The proposed price hike will severely limit the ability of small- and medium-sized (SME) exporters to utilize its services, according to the Chamber. As proposed, the fee for the Gold Key Matchmaking service, which pairs U.S. companies with potential buyers in foreign countries, would increase by 153 percent for SME businesses. The fee increase would be almost as large as that for large companies. Currently less than 1 percent of SME companies that export use the ITA's export promotion services, and this proposed increase would further reduce utilization. The Chamber noted that the U.S. spends only one-sixth of the international average on export assistance to small businesses. "Small business exporters in the United States are at a severe competitive disadvantage." Posted comments on the proposed rule: <http://www.regulations.gov/#!docketDetail;dc=PR%252BPS;rpp=25;so=ASC;sb=postedDate;po=0;D=ITA-2012-0001>

Commerce Report shows 34 States achieve record exports for First Half 2012

The U.S. Department of Commerce (DOC) recently released trade data reporting that 34 U.S. states achieved record high merchandise exports during the first half of 2012. As posted, Texas remains by far the largest exporting state with a 16.9% share of total U.S. merchandise exports during January-June 2012, followed by California (10.6% share), New York (5.4%), Washington (4.5%), Illinois (4.5%), Florida (4.3%), Louisiana (3.7%) and Michigan (3.7%). While Hawaii, Wyoming, South Dakota, Montana and Rhode Island were the states with the fewest exports during January-June 2012. U.S. exports of transportation increased by \$17.5 billion during the first half and accounted for one-third of the dollar growth in U.S. merchandise exports. According to the DOC press release, total merchandise exports from all 50 states contributed to a record \$2.1 trillion in goods and services exports last year, which supported 9.7 million jobs.

Further details:

<http://host.msgapp.com/Extranet/95988/forms.aspx?mmsgid=e0mgdjme2rm2vjnh1xkp5rgs>

Ex-Im Bank Talks about Financing Availability for Export Sale

As reported, Fred Hochberg, president of the Export-Import Bank of the United States, has a message for Massachusetts employers, "companies that export survive economic downturns better than those that do not sell overseas." According to Hochberg, the Export-Import Bank has provided loans to 74 exporting Bay State companies in the past two years and is looking to do more. Those loans are supporting overseas sales of everything from cranberries to bicycles, medical devices to semiconductors, chemicals to coatings, drumsticks to law enforcement badges, and machinery. The Export-Import Bank provides credit insurance, working capital loans, and buyer financing to US companies that help those companies sell US products and services overseas. Loans can be made in almost any overseas market, though the bank is currently targeting developing markets such as Brazil, Colombia, India, Indonesia, Mexico, Nigeria, So. Africa, Turkey, and Vietnam. Export-Import Bank loans are generally approved within 30 days. Terms vary by industry. Fifteen percent cash payment is required. The product to be sold must contain 85 percent US content. Loans range up to \$3.5 Billion. In a rare bipartisan show of support, the US Congress recently re-authorized the charter of the Export-Import Bank and increased its lending authority. Last year, the bank financed nearly \$40 Billion in exports from 3,600 companies in the US. More than three-quarters of these companies were small- and medium-sized (SME) businesses. The Export-Import Bank Web site provides a list of all firms in the Commonwealth that have used Ex-Im loan products since 2007. [Visit http://www.exim.gov](http://www.exim.gov)

BIS Posts Information on Company Fine for Exporting to Party on Entity List

As a result of a settlement of export control violations with the Bureau of Industry and Security (BIS), Global Metcorp LLC will pay a civil penalty of \$50,000, of which \$40,000 is suspended, and its President will complete export compliance training. According to the BIS order, Global Metcorp exported and arranged for the export of scrap steel to People's Steel Mills of Pakistan, which is on the BIS Entity List. Global Metcorp's president must complete the export compliance training within the one year from the date of the BIS order. If Global Metcorp fails to comply with the settlement agreement its export privileges may be denied for one year.

BIS notice: http://beta-efoia.bis.doc.gov/index.php/component/docman/doc_view/797-e2279?Itemid

Defense Dept Posts Comments on ITAR Compliance Issues with U.K. Defense Treaty

A provision of the Defense Department's (DoD) regulations implementing the Defense Trade Cooperation Treaty that gives DoD officials a role in determining whether items can be exported according to the terms of the Treaty, or are instead disallowed because of International Traffic in Arms Regulations (ITAR) limitations, could cause compliance problems for exporters. According to the American Bar Association Section of Public Contract Law (ABA-PCL) in comments on DoD's May interim rule, "the regime has the potential for confusion, particularly because most DoD contracting officers and program managers have relatively little formal training in export controls, and there is no explicit 'safe harbor' provision allowing reliance on DoD determinations." The ABA-PCL advises the Defense Trade Treaty allows defense articles to move freely to the U.K. if the project or transaction is covered by the Treaty, without the need for separate ITAR authorizations. The ITAR contains an Exempted Technology List of articles that are not covered by the Treaty at Supplement No. 1 to Part 126. As such, before exporting under the Treaty, exporters must confirm to the State Department's Defense Directorate of Trade Controls (DDTC) that the project associated with the export is on the list of approved projects, is for U.S. government end use or certain agreed upon U.K. uses, and that the defense article otherwise subject to a licensing requirement is not on the ITAR Exempted Technology List. The interim rule says DoD contracting officers and program managers will play a role in identifying solicitations and requests for proposal that may be subject to Treaty treatment and determining whether a line item is subject to the Treaty or instead carved out. In effect, ABA-PCL claims, the interim rule "grants DoD the legal authority to make de facto ITAR jurisdictional determinations regarding whether a particular product or service is eligible for (or precluded from) Treaty treatment." The problem, according to ABA-PCL, is that "the only government entity that can make a definitive determination is DDTC." If DoD personnel make incorrect determinations on applicability of the Treaty to an article, "a contractor will either be precluded from exercising its own judgment to utilize the exemption, or the contractor may incorrectly utilize the exemption and run the risk of disagreement or enforcement by DDTC based upon this incorrect determination." Therefore DoD and DDTC should set up a consultation mechanism and allow exporters to rely on DoD determinations of whether an article is subject to the Treaty, according to the ABA-PCL. Comments on the interim rule:

<http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=25;po=0;D=DA RS-2012-0026>

ECHA Posts Regulations on Prior Informed Consent for Import and Export of Certain Hazardous Chemicals

The European Union recently issued the following trade-related releases:

The Prior Informed Consent (PIC) Regulation implements guidelines for the import and export of certain hazardous chemicals. The new regulations require industry to notify their intention to import or export these chemicals. The European Chemical Agency (ECHA) has the task of transmitting the notifications to the importing (non-EU) countries, to manage all related communication, and to keep a database of the notifications. Under the current legislation, these tasks are the responsibility of the European Commission's Joint Research Center (JRC).

http://echa.europa.eu/web/guest/view-article/-/journal_content/7e56e812-fa37-4f78-be0d-07489916ff2b

ITA Issues FR Notice on Trade Mission to India and Sri Lanka in 2/2013

The International Trade Administration (ITA) announced a multi-sector trade mission to India and Sri Lanka to introduce U.S. firms to South India's and Sri Lanka's rapidly expanding markets for infrastructure, hospitality, healthcare, and environmental and information technologies. The mission scheduled for Feb. 3-9, 2013, will tour three cities, Chennai, Cochin (Kochi) and Colombo, where participants will receive market briefings and participate in customized meetings with key officials and potential partners, the ITA said. Trade mission participants will also have the option to participate in additional stops in Bangalore and Hyderabad, where Commercial Service offices can arrange meetings with private sector developers/partners and state/local government officials. Recruitment for the mission will begin immediately and conclude no later than 11/30/12. The ITA advised it will begin to review applications and make selection decisions beginning in December 2012. ITA FR

[notice:http://www.ofr.gov/OFRUpload/OFRData/2012-19823_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2012-19823_PI.pdf)



Japan Posts Information on Advance Filing for Inbound Ocean Cargo - Starting in 2014

Japan Customs is set to begin advance electronic filing of maritime container cargo information in March 2014, it noted in an update on implementation of the Advance Filing Rules. Carriers and Non-Vessel Operating Common Carriers (NVOCC) will be required to electronically submit to Japan Customs information on maritime container cargoes to be loaded on a vessel intended to entry into a port in Japan, in principle no later than 24 hours before departure of the vessel from a port of loading. According to the update, until implementation of the rules is “well-established,” the deadline for filing will be relaxed to no later than departure for certain short-distance shipping routes. Upon implementation in March 2014, it will become mandatory for carriers to file cargo information at the master bill of lading level, and for NVOCCs to file cargo information at the house bill of lading level, through the Nippon Automated Cargo and Port Consolidated System (NACCS). Carriers and NVOCCs will be able to file cargo information in NACCS through either:

1. a gateway connection with the reporter’s own system;
2. connection through a service provider; or
3. connection using client software provided by the NACCS center, Japan Customs said.

Upon filing, Japan Customs will perform a risk assessment. Depending on the results of the risk assessment, the cargo may either (a) be loaded on the ship, (b) the NVOCC or carrier will be instructed to correct and resubmit the information before loading, or (c) in the case of high-risk cargo, Japan Customs will provide advance notice suspending discharge of the cargo in Japan. According to Japan Customs, release of the operational IT system will occur in October 2013.

Fact sheet on the Advance Filing Rules:
<http://www.customs.go.jp/english/summary/advance/annex01.pdf>

Data elements of the Advance Filing Rules:
<http://www.customs.go.jp/english/summary/advance/annex02.pdf>

Ports for which deadlines will be relaxed during implementation:
<http://www.customs.go.jp/english/summary/advance/annex03.pdf>

Overview of the Advance Filing Rules and the NACCS electronic filing system:
<http://www.customs.go.jp/english/summary/advance/annex04.pdf>

Business process flow showing the Advance Filing Rules procedures:
<http://www.customs.go.jp/english/summary/advance/annex05.pdf>

Japan Customs notice:
<http://www.customs.go.jp/english/summary/advance/index.htm>

President Signs Bill to Expand Trade with Africa and Central America

President Obama recently signed into law HR-5986, which has provisions that involve trade with sub-Saharan Africa and Central America, and contains provisions to renew authorities under the Burma Freedom and Democracy Act. Congress passed the bill with overwhelming bipartisan support. HR-5986 addresses sub-Saharan Africa’s top trade priority with the U.S. by extending a key provision under the African Growth and Opportunity Act (AGOA) trade preference program until September 2015, the White House reported. This provision, which was set to expire in the fall, will continue to allow duty-free access to the U.S. market for certain AGOA apparel exports. AGOA continues to be critical to expanding and diversifying our trade and investment relationship with Africa. The bill also includes technical amendments to textile and apparel provisions under the Central America–Dominican Republic–U.S. Free Trade Agreement (CAFTA-DR). According to the White House, the technical changes will have real job-supporting economic benefits for thousands of American workers in our textile and apparel industry, and will help boost economic growth in these developing regions. White House [press release: http://www.whitehouse.gov/the-press-office/2012/08/10/statement-press-secretary-key-trade-measures-hr-5986](http://www.whitehouse.gov/the-press-office/2012/08/10/statement-press-secretary-key-trade-measures-hr-5986)

International Chamber of Commerce Warns of Fake B/Ls Passing Through Banks

The International Chamber of Commerce's Commercial Crime Services, Maritime Bureau (IMB) recently issued a warning about a pre-financing scam involving importers in West Africa and exporters in China that is manipulating the trade finance system to provide unofficial pre-shipment finance based upon false shipping documents. The bureau advised it first identified the scheme when authenticating liner bills of lading submitted by member banks. The shipments details presented matched those of genuine shipments, but the documents contained enough discrepancies to warrant further investigation, and the carriers confirmed that the documents were not genuine. IMB Director Pottengal Mukundan advised from the bank’s perspective, the biggest risk is that there could potentially be two or more sets of documents in circulation for the same shipment, each generating a set of trade finance for the same cargo, but going through different banking channels. The bureau notes one reason for the success of such schemes is that banks do not share their information on transactions. Other schemes which build upon this vulnerability include money laundering and long term frauds in which the bank itself becomes the target of the scam.

IMB notice: <http://www.icc-ccs.org/news/748-imb-warns-against-pre-financing-scam>

HMSA Issues Proposed Rule with Significant Changes to Harmonize HazMat Shipping Rules

The Transportation Department's Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to amend its Hazardous Materials Regulations (HMR) to maintain alignment with international standards. The changes would incorporate various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements, according to a recent Federal Register notice. According to PHMSA, the revisions are necessary to harmonize the HMRs with recent changes made to the International Maritime Dangerous Goods Code (IMDGC), the International Civil Aviation Organization's (ICAOs) Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the U.N. Recommendations on the Transport of Dangerous Goods -- Model Regulations. The proposal also addresses a petition for rulemaking. PHMSA advised harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials to and from the U.S. and becomes increasingly important as the volume of hazardous materials transported in international commerce grows. It also said that, by facilitating compliance, harmonization tends to enhance safety for international movements. The proposed changes are posted, and comments are due by 10/15/12. Comments may be submitted to <http://www.regulations.gov> or by mail to Docket Management System; U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590-0001. PHMSA FR notice

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-15/pdf/2012-18431.pdf>



Senate Group Urging Full Expenditure of HMT for Dredging

As reported a bipartisan group of 25 senators urged the Office of Management and Budget (OMB) to allocate all money collected through the Harbor Maintenance Tax for port dredging in its fiscal 2014 plan. The senator cited language in the recently passed surface transportation bill stating the administration “should request full use” of the tax, which is expected to fill the Harbor Maintenance Trust (HMT) Fund with roughly \$8 billion by the start of fiscal 2014. The Army Corps of Engineers estimates that major cargo ports that handle about 90 percent of commercial traffic are only dredged to their authorized depths 35 percent of the time. Under the current version of the fiscal 2013 budget, ports will get about \$1.1 Billion in dredging dollars. “With 13 million jobs and \$4 billion in economic activity dependent on the ports and harbors, we cannot let them fall into further disrepair,” the letter warned. “Because waterborne transportation is often the least expensive means of transporting vital commodities and goods, maintaining this essential infrastructure bolsters our economic competitiveness and strengthens the economy.” www.joc.com (8/15/12)

Panama FTA Implementation Process Moving Forward

A press release issued by President Ricardo Martinelli’s office indicates that the Panamanian government expects the U.S.-Panama Trade Promotion Agreement (FTA) to enter into force in October. As reported, the Panamanian government recently unveiled four bills that must be approved by the National Assembly in order to move the implementation process one step closer to a successful conclusion. The bills involve various intellectual property rights (IPR) issues as well as certain additional provisions that are required to implement the FTA. One of the bills seeks to strengthen and improve IPR protection in Panama by adopting enhanced enforcement measures. A second bill deals with copyright protection issues while the third involves certain amendments to the plant variety protection provisions. [Press report: http://host.msgapp.com/Extranet/95988/forms.aspx?mmsgid=e0mgdjme2rm2vjnh1xkp5rgs](http://host.msgapp.com/Extranet/95988/forms.aspx?mmsgid=e0mgdjme2rm2vjnh1xkp5rgs)