



# EIB World Trade Headlines

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## STATE DEPARTMENT NOTICE

**\*Industry Notice** - Effective immediately, Super User designation letters will be accepted by either e-mail ([dtradehelpdesk@state.gov](mailto:dtradehelpdesk@state.gov)) or via fax (202-663-2756). For e-mailed requests please follow the below criteria:

\*E-mail the above Super User request letter to the DTrade Help Desk at [Dtradehelpdesk@state.gov](mailto:Dtradehelpdesk@state.gov). The request must be a signed, scanned, PDF attachment. The subject line of the e-mail must list the company name first followed by super user request (i.e. ABC Company-Super User Request).

\*Complete updated instructions can be found in the Getting Started with DTrade documentation on the DTrade Information Center website. (01.25.13)

**\*Industry Notice:** - The PM/DDTC, DTrade2, MARY, EFS, DTAS-Online and TRSe websites will be undergoing maintenance updates on January 25, 2013 through January 28, 2013 during the hours of 9:00 PM - 5:00 AM. Any activity during this time frame should be considered invalid. If you experience any technical problems, please contact the DDTC Help Desk at 202-663-2838 or via email at [dtradehelpdesk@state.gov](mailto:dtradehelpdesk@state.gov). (01.22.13)

**\*Industry Notice** - Effective immediately, industry must use the updated version (Version 3) of the DS2032 Statement of Registration form. Revisions include fixing several typos and adding new flow-over instructions to Block 12 advising the applicant to enter the email address of the person to receive the approval letter and who will receive the electronic renewal notice letter. DDTC no longer mails hardcopy approval letters or renewal letters. (1.18.13)

## NEWSLETTER NOTES

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## Ocean Port Labor Update

- \* On 11/9, ILA walked out of talks with USMX.
- \* ILA and USMX are meeting from 11/15/17. Federal Mediator is present at the meetings. Negotiations are described as "Intensive Negotiations".
- \* No change in contract extension which now expires on 2/6/2013.

## -CBP Issues Notice- Tuna TRQ Exceeded Preliminary Restraint Limit at Opening

U.S. Customs and Border Protection (CBP) advised the tariff rate quota for tuna, which opened 01/02/13, exceeded the preliminary restraint limit at the opening moment. All entries presented at the over-quota (high) rate since the opening have been charged and may be released, and entries should continue to be submitted at the over-quota (high) rate. The final quota limit should be provided to CBP in March. Upon receipt of the final quota limit from the National Marine Fisheries Service (NMFS), CBP will issue proration and liquidation instructions to the field/trade.

CBP notice:

[http://www.cbp.gov/linkhandler/cgov/trade/trade\\_programs/textiles\\_and\\_quotas/qbts/qbt\\_13\\_501.ctt/qbt\\_13\\_501.pdf](http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/textiles_and_quotas/qbts/qbt_13_501.ctt/qbt_13_501.pdf)

## CBP Posts Information on April Customs Broker Exam

U.S. Customs and Border Protection (CBP) announced the customs broker's license examination scheduled for April 2013 will be on Monday, 04/01/13. The exam typically consists of 80 multiple-choice questions, with a score of 75 percent required to pass. Exam topics usually include: Entry, Classification, Country of Origin, Trade Agreements, Antidumping/Countervailing Duty, Value, Broker Responsibilities, FP&F, Protests, Marking, Prohibited and Restricted Merchandise, Drawback, Intellectual Property Rights, and other subjects pertinent to a broker's duties.

CBP notice:

[http://www.cbp.gov/linkhandler/cgov/trade/trade\\_programs/broker/broker\\_exam/cbl\\_exam\\_april2013.ctt/cbl\\_exam\\_april2013.pdf](http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/broker/broker_exam/cbl_exam_april2013.ctt/cbl_exam_april2013.pdf)

## FDA Posts Fact Sheets and Presentations on Proposed Produce Safety Regulations

The Food and Drug Administration (FDA) posted three fact sheets and a presentation on its proposed produce safety regulation for facilities that grow, harvest, package and hold raw produce, as well as its Hazard Analysis and Risk-Based Preventative Controls (HARPC) regulation for facilities that manufacture, process, pack or hold human food.

According to FDA, importers will be responsible for verifying their foreign suppliers' compliance with these regulations per the Foreign Supplier Verification Program (FSVP).

Produce safety regulation fact sheet

<http://www.fda.gov/Food/FoodSafety/FSMA/ucm334114.htm>

Fact sheet on the regulation's subparts

<http://www.fda.gov/Food/FoodSafety/FSMA/ucm334552.htm>

HARPC fact sheet is available

<http://www.fda.gov/Food/FoodSafety/FSMA/ucm334115.htm>

Presentations on the two regulations, as well as other provisions of the Food Safety Modernization Act:

<http://www.fda.gov/Food/FoodSafety/FSMA/ucm265429.htm>



## CBP Posts Report on Textile IPR Seizures for Fiscal Year 2012

U.S. Customs and Border Protection (CBP) posted its fiscal year 2012 textile and apparel enforcement statistics showing that textiles and apparel seized for intellectual property rights (IPR) violations fell slightly from a year earlier. CBP advised that the number of non-IPR smuggling seizures nearly doubled while the domestic value of the seizures grew more than seven-fold, to \$7.48 million, compared to the previous year.

For FY 2012 (October 1, 2011-September 30, 2012), textiles and apparel continued to be politically and economically sensitive commodities. Complex regulations and the increasing number of free trade agreements (FTAs) and trade preference programs, each with unique requirements, create opportunities for fraud, noted CBP. The risk to the industry was seen as significant enough to warrant designation as a Priority Trade Issue (PTI) and therefore focused attention of CBP resources. CBP states the posted statistics reflect the results of its assertive approach to textile enforcement and efforts combat the threat of transshipment, quota and evasion, and improper/misleading country of origin marking.

CBP utilizes Textile Production Verification Teams (TPVTs) to conduct on-site verification of foreign textile and wearing apparel manufacturers. These teams review and verify production capability and compliance with the terms of FTAs and trade preference programs. CBP advises the TPVT visits help deter circumvention of the preference program requirements, as well as educate foreign governments and manufacturers. CBP posted the TPVT illegal transshipment and preference claim statistics for review.

In addition, CBP provided statistics on exams performed, audits conducted, laboratory analyses statistics, and Special Enforcement Operations (SEO).

CBP report:

[http://www.cbp.gov/linkhandler/cgov/trade/priority\\_trade/textiles/enf\\_stat/2012\\_textile\\_enforcement\\_stats.ctt/2012\\_textile\\_enforcement\\_stats.doc](http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/textiles/enf_stat/2012_textile_enforcement_stats.ctt/2012_textile_enforcement_stats.doc)

## BIS Posts Comments on Proposed Rule for Voluntary Self-Disclosure

The Bureau of Industry & Security's (BISs) proposed rule comment period closed 01/07/13. Commenters generally supported the 180-day time limit for completion of voluntary self-disclosures (VSDs) and Revised Notice of the Institution of Administrative Enforcement Proceedings. But they also suggested several tweaks. As posted, the proposed rule would require that the final, narrative account required in VSDs of violations of the Export Administration Regulations (EAR) be submitted to the Office of Export Enforcement (OEE) within 180 days of the initial VSD notification.

It also would authorize the use of alternative delivery services for providing notice of the issuance of a charging letter. Boeing commented the proposed changes to the EARs are "reasonable and appropriate." It noted the 180-day deadline "provides adequate time for review and investigation" and fixed time limits allow exporters and the Office of Export Administration "to efficiently perform diligence and conclude investigations." It also supported BIS proposals to allow more delivery options. TechAmerica also supported the proposed rule on VSDs, saying it would provide more efficiency in resolving enforcement proceedings.

The requirement for a full narrative account of violations within 180 days "should encourage companies with sound Trade Compliance departments to perform with greater precision and transparency." But "the current lack of transparency of possible enforcement actions ensuing from VSDs is of great concern to the technology industry," TechAmerica added.

Another commenter, MKS felt BIS should clarify the exact date that the proposed 180-day window begins. It noted it isn't clear if it's the date postmarked, or accepted by a courier, or the date it's received by OEE.

BIS notice: <http://beta-www.bis.doc.gov/index.php/about-bis/newsroom>

**-Court Rules-  
Law Allowing Imposition of CV  
Duties on China and Vietnam is  
Constitutional**

The March 2012 law allowing countervailing (CV) duties on non-market economy (NME) countries like China and Vietnam is not unconstitutional, ruled the Court of International Trade (CIT), even though the law is retroactive in application, and creates a "special rule" allowing CV duties but not double counting adjustments for proceedings between 2006 and 2012. The law was hurriedly enacted to specifically allow imposition of CV duties on NME countries, after the Court of Appeals for the Federal Circuit (CAFC) upheld a 2010 CIT ruling that the law, as it existed at the time, did not allow for their imposition.

Without the law, the International Trade Administration (ITA) may have had to end 24 (now 26) CV duty orders on products from China and Vietnam, and refund CV duties collected.

As reported, the ITA had not historically imposed CV duties on NMEs, saying subsidies could not be defined in countries where the government controls production. But in 2007, the ITA changed tack and issued its first CV duty order on a NME country. Two companies subject to the CV duty order on off-the-road tires from China -- TUTRIC, a Chinese exporter, and GPX International, the U.S. parent company of a Chinese exporter -- challenged the ITA's actions.

*(Continued above)*

CIT ruled against the ITA in 2010, finding that the law did not allow imposition of CV duties on NME countries, because Congress understood CV duties only applied to market economies when it enacted the governing statute. CAFC upheld the ruling in 2011.

Faced with the revocation of 24 CV duty orders due to the court decisions, Congress moved quickly to pass legislation specifically allowing imposition of CV duties on NMEs. During a one-week period in March 2012, both houses of Congress passed, and President Obama signed the law. The law was divided into two sections. The first allowed imposition of CV duties on NME countries retroactive to 11/20/06.

The second provided for adjustments to antidumping duties in cases where concurrent CV duties would lead to "double counting," in response to adverse World Trade Organization rulings, and was effective 03/13/12. GPX and TUTRIC challenged the constitutionality of the new law on three bases. Complete details posted for review.

Despite upholding the law's constitutionality, CIT also remanded several issues specific to investigations and administrative reviews of the CV duty order on off-the-road tires from China related to GPX and TUTRIC.

GPX Int'l Tire Corp. v. United States, Slip Op. 13-02, (01/07/12): [http://www.cit.uscourts.gov/SlipOpinions/Slip\\_op13/13-02.pdf](http://www.cit.uscourts.gov/SlipOpinions/Slip_op13/13-02.pdf)

**-FUN FACTS-**

1. WE ARE FIRST IN MANUFACTURING, BUT THIRD IN MANUFACTURING EXPORTS, BEHIND GERMANY AND CHINA.
2. ONE IN THREE MANUFACTURERS EXPORTS (IT'S ONE IN ONE HUNDRED FOR ALL US COMPANIES, BUT SOME FOLKS DON'T LIKE THAT STATISTIC BECAUSE IT INCLUDES MOM AND POP STORES WHO OBVIOUSLY AREN'T LOOKING TO SELL DONUTS IN BANGLADESH).
3. THE U.S. AND CANADA ENJOY THE LARGEST ENERGY TRADE RELATIONSHIP IN THE WORLD. CANADA IS THE SINGLE LARGEST FOREIGN SUPPLIER OF ENERGY TO THE U.S.--PROVIDING 17% OF U.S. OIL IMPORTS AND 18% OF U.S. NATURAL GAS DEMAND.



## New Limits for Accepting Untimely Petitions

Under existing regulatory authority, to be considered timely petitions for relief in response to claims for liquidated damages must be filed (a) by bond principals within 60 days from the date of mailing of the notice of liquidated damages or any lawful extension thereof or (b) by sureties within 60 days of the demand for payment by CBP or any lawful extension thereof. No petition for relief is considered on a claim filed after (a) the commencement of sanctioning action against the bond principal or (b) the issuance of a notice to show cause against the surety.

If a petition is submitted late the CBP Fines, Penalties and Forfeiture officer first considers the petition as though it had been filed on time and then determines the amount of mitigation that would have been afforded had the petition been filed timely. Once this base amount is determined the FPF officer charges an additional amount calculated by determining the number of calendar days that the petition was late and adding an additional 0.1% for each day, with a minimum additional amount of \$400.

CBP is now announcing new guidelines in an attempt to encourage the timely filing of petitions for relief and promote the timely resolution of liquidated damages claims. Under these guidelines untimely petitions will be accepted or considered only if the petitioner is able to demonstrate the existence of extraordinary circumstances that prevented it from filing a timely petition or timely seeking a lawful extension of time in which to file a petition. Extraordinary circumstances may include some intervening event beyond the petitioner's control resulting in a justifiable inability to timely address or respond to the claim.

According to ST&R attorney Lenny Feldman, CBP officials have said that not receiving notice of a liquidated damages claim will be considered an extraordinary circumstance. FPF officers will exercise their discretion in determining whether circumstances existed so as to warrant CBP's consideration or acceptance of a late petition.

*(Continued above)*

Subject to the exception noted below, no untimely petition will be accepted in any circumstance if it is filed:

- a.** more than 180 days after the date of mailing of the notice of claim to the bond principal or, in the case of a surety, the date of mailing of the first demand on the surety;
- b.** after the petitioner has previously submitted a petition in the same case and/or been offered mitigation in the same case and such mitigation amount was not paid within the prescribed period;
- c.** after the claim has been referred to CBP's Office of Chief Counsel for collection action;
- d.** after the commencement of sanctioning action against the bond principal; or
- e.** after the issuance of a notice to show cause against a surety.

However, untimely petitions for relief of liquidated damages claims issued for the late filing of an entry summary, the late payment of estimated duties (including under the periodic monthly statement test), the late payment of passenger processing fees or the late filing or late payment of reconciliation entries may be accepted without regard to the limitations expressed in paragraphs a and b above at any time prior to the circumstances described in paragraphs c through e.

CBP notes that (a) an untimely petition is not a supplemental petition described in 19 CFR 172.41, (b) a supplemental petition must be timely filed following a decision on an original petition filed in accordance with the established regulatory time frames, (c) the rejection of an untimely petition does not constitute a "decision" for purposes of 19 CFR 172.41, and (d) petitions that are filed untimely and not accepted for consideration will be rejected. A party responsible for a liquidated damages claim may submit an offer in compromise to CBP pursuant to 19 USC § 1617 and 19 CFR 161.5.

## New Calculation of Mitigated Amounts

In calculating the mitigated amount on a late petition CBP will first determine the base amount (i.e., the amount of mitigation that would have been afforded on a timely petition or the previously available option one amount) and then determine the additional mitigation amount by multiplying the full assessed amount of the claim by 0.1% and then multiplying by the number of days the petition is late. The result will be the additional amount added to the base amount to produce the mitigated amount applied to the untimely-filed petition.

In no case will the additional mitigated amount be less than \$400.

However, for untimely petitions submitted in response to a claim for liquidated damages for the late filing of an entry summary, the late payment of estimated duties (including under the periodic monthly statement test), the late payment of passenger processing fees or the late filing or late payment of reconciliation entries, the additional mitigated amount calculation will not use the actual liquidated damages assessed amount as described above.

Instead, CBP will multiply two times the duties, taxes and due in payment fees (or \$1,000, whichever is greater) by 0.1% and then multiply by the number of days the petition is late. Here too the minimum additional mitigated amount will be \$400.

## Census Posts Information on November Trade Deficit - Imports Increase More than Exports

According to the Census Bureau and Bureau of Economic Analysis in their U.S. International Trade in Goods and Services Report for November 2012, imports rose significantly in November, leading to a \$6.6 billion widening of the trade deficit to \$48.7 billion, despite a concurrent increase in exports.

The report showed that, as compared to revised October 2012 levels, exports were up \$1.7 billion to \$182.6 billion, but imports rose by \$8.4 billion to \$231.3 billion. Consumer goods made up over half of the import growth in November. In comparison to November 2011 totals, exports increased by 3.3 percent and imports by 2.5 percent. In addition, the U.S. trade deficit with China fell to \$29 billion in November, from a revised \$29.5 billion in October.

Census press release: [http://www.census.gov/foreign-trade/Press-Release/current\\_press\\_release/ft900.pdf](http://www.census.gov/foreign-trade/Press-Release/current_press_release/ft900.pdf)

## -Industry Notice-

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## CBP Posts Updated FAQs on Simplified Entry

U.S. Customs and Border Protection (CBP) posted an updated version of its frequently asked questions (FAQs) on policy for cargo release/simplified entry. Updated information includes a list of documents supported within the pilot program through the recently added document imaging capability.

The FAQs also now say "CBP has a tentative plan to expand the pilot to the ocean mode of transportation in 2014."

CBP Power Point presentation on the pilot program: <http://1.usa.gov/10HxsM8>

CBP fact sheet:  
[http://www.cbp.gov/linkhandler/cgov/newsroom/fact\\_sheets/trade/ttfs/sefs.ctt/sefs.doc](http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/trade/ttfs/sefs.ctt/sefs.doc)

CBP notice:  
[http://www.cbp.gov/linkhandler/cgov/trade/trade\\_transformation/simplified\\_entry/sep\\_policy.ctt/sep\\_policy.doc](http://www.cbp.gov/linkhandler/cgov/trade/trade_transformation/simplified_entry/sep_policy.ctt/sep_policy.doc)

## **SPECIAL SECTION**

### **USTR Posts Report on China Trade Policy Priorities for 2013**

**Sandler, Travis & Rosenberg P.A.**

[www.strtrade.com](http://www.strtrade.com)

The Office of the U.S. Trade Representative has posted to its Web site its [annual report](#) on China's compliance with its World Trade Organization commitments. The report states that despite the "remarkable results" that have resulted from China's accession to the WTO in 2001, "the overall picture currently presented by China's WTO membership remains complex."

The report reiterates ongoing concerns about the direction of China's economic and trade policies. "For much of the past decade, the Chinese government has been re-emphasizing the state's role in the economy, diverging from the path of economic reform that drove China's accession to the WTO," USTR states. "With the state leading China's economic development, the Chinese government has pursued new and more expansive industrial policies, often designed to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries, particularly ones dominated by state-owned enterprises."

This heavy state role in the economy, reinforced by unchecked discretionary actions of Chinese government regulators, has generated serious trade frictions with China's many trade partners, including the United States." USTR calls on China to reverse these trends and notes that "there were some positive signs in 2012 that China may be focused on re-energizing its economic reforms."

Looking ahead, the report identifies the following priority issues.

*(Continued above)*

## **Intellectual Property Rights**

Despite repeated anti-piracy campaigns and an increasing number of civil IPR court cases, counterfeiting and piracy remain at unacceptably high levels and continue to cause serious harm to U.S. businesses across many sectors of the economy. Some critical changes to China's legal framework are still needed in a few areas, such as further improvement of measures for copyright protection on the Internet following China's accession to the World Intellectual Property Organization Internet treaties and correction of continuing deficiencies in China's criminal IPR enforcement measures.

## **Industrial Policies**

Having achieved "major progress in de-linking indigenous innovation policies at all levels of the Chinese government from government procurement preferences" in 2011 the principal challenge for the U.S. in 2012 "was to begin addressing a range of discriminatory indigenous innovation preferences proliferating outside of the government procurement context." Discussions on this issue are expected to intensify in 2013.

In other areas, the U.S. plans to continue pursuing WTO dispute settlement cases against Chinese export restraints on rare earths, tungsten and molybdenum and government aid to automobile and automobile-parts enterprises, hold "serious discussions" to work toward a mutual understanding of China's VAT system and the concepts on which a trade-neutral VAT system is based, and maintain pressure on China to take concrete steps toward fulfilling its commitment to accede to the WTO's Government Procurement Agreement.

## **Trading Rights and Distribution Services**

In most sectors China has implemented its commitments to fully liberalize trading rights (the right to import and the right to export) and distribution services (wholesale, retail, direct selling and franchising services).

*(Continued below)*

However, the U.S. will continue to press China to resolve one outstanding concern; i.e., even though China has become a major market for U.S. direct sellers it continues to subject foreign direct sellers to “unwarranted restrictions on their business operations, such as overly burdensome service center requirements.”

## Agriculture

China is now the United States’ largest agricultural export market but “remains among the least transparent and predictable of the world’s major markets for agricultural products, largely because of selective intervention in the market by China’s regulatory authorities.” Specific complaints include “seemingly capricious practices by Chinese customs and quarantine agencies” that can delay or halt shipments of agricultural products as well as “SPS measures with what seem to be questionable scientific bases and a generally opaque regulatory regime.” In 2013 the U.S. will continue to urge China to lift its restrictions on imports of U.S. beef and poultry products.

## Services

The U.S. continues to enjoy a substantial surplus in trade in services with China but there are still numerous challenges in a range of sectors, including the use of “discriminatory regulatory processes, informal bans on entry, overly burdensome licensing and operating requirements and other means to frustrate efforts of U.S. suppliers of banking, insurance, express delivery, telecommunications, legal and other services to achieve success.”

## Transparency

“China has made important strides to improve transparency across a wide range of national and provincial authorities,” USTR states, but “still has more work to do if it is to fully implement some of its commitments.” For example, China still has not made available translations of all its trade-related laws, regulations and other measures in one or more of the WTO languages (English, French and Spanish) and indeed has not yet even established an infrastructure to undertake these translations.

## -SPECIAL SECTION-

### When An Export Voluntary Disclosure *Isn't* a Voluntary Disclosure

ExportLawBlog

[www.exportlawblog.com](http://www.exportlawblog.com)

The new owners of **Ellman International Inc.**, a New Jersey supplier of medical devices, **agreed** to pay the Office of Foreign Assets Control (“OFAC”) \$191,700 to settle charges that the prior owners of the company exported medical devices to Iran and hired a physician in Iran without authorization from OFAC.

Allegedly the medical devices were shipped to Iran through a middleman in Dubai with the knowledge and participation of senior management of the old owners. When the new owners of Ellman discovered the violations after the acquisition, they voluntarily disclosed the violations to OFAC.

Sadly, at least for the new owners, OFAC held that the voluntary disclosure wasn’t a voluntary disclosure under OFAC’s **Enforcement Guidelines**. In holding that the voluntary disclosure wasn’t a voluntary disclosure, OFAC had this to say:

*The submission was determined not to be a voluntary disclosure as defined by OFAC’s Economic Sanctions Enforcement Guidelines, 31 C.F.R. Part 501, App. A (“The Enforcement Guidelines”). OFAC had previously been notified of a rejected transaction between Ellman and a customer located in Iran but did not at that time learn the full scope of the activity because Ellman’s prior owners failed to properly respond to OFAC’s inquiry.*

Now, of course, there is a good argument that the one rejected transaction wasn’t eligible for treatment as a voluntary disclosure because OFAC had already been informed of it by the rejecting third party.

*(Continued below)*



But it seems more of a stretch to say that everything else in the new management disclosure wasn't a voluntary disclosure simply because prior management did not respond to an earlier OFAC inquiry on the rejected transaction. Let's look at the actual language of the Enforcement Guidelines which, shocking as that may sound, should control here:

***Notification to OFAC of an apparent violation is not a voluntary self-disclosure if: a third party is required to and does notify OFAC of the apparent violation or a substantially similar apparent violation because a transaction was blocked or rejected by that third party (regardless of when OFAC receives such notice from the third party and regardless of whether the Subject Person was aware of the third party's disclosure); the disclosure includes false or misleading information; the disclosure (when considered along with supplemental information provided by the Subject Person) is materially incomplete; the disclosure is not self-initiated (including when the disclosure results from a suggestion or order of a federal or state agency or official); or, when the Subject Person is an entity, the disclosure is made by an individual in a Subject Person entity without the authorization of the entity's senior management.***

\*\*Nope. Nothing mentioned at all about failing to respond to an OFAC inquiry as forever barring any future disclosure from being given credit as a voluntary disclosure.

Of course, the moral here is not just that OFAC often doesn't pay attention to its own regulations. The more important moral, because it's something that you can do something about, is that acquiring parties need to conduct adequate due diligence and discover export violations before the deal closes, i.e., before it's too late. Perhaps the new owners did conduct such due diligence, in which case it is likely that there is a hold-back on the purchase price that will be used to pay this fine. But if they didn't, that was an expensive mistake.

## North Wales Man Sentenced for Illegally Exporting Goods

**FOR IMMEDIATE RELEASE BUREAU OF INDUSTRY AND SECURITY Office of Congressional and Public Affairs - January 17, 2013 [www.bis.doc.gov](http://www.bis.doc.gov) (202) 482-2721**

PHILADELPHIA - Timothy Gormley, 52, of North Wales, PA, was sentenced today to 42 months in prison for five counts of violating the International Emergency Economic Powers Act (IEEPA). Gormley was employed by Amplifier Research, in Souderton, Pennsylvania, a manufacturer and supplier of microwave amplifiers with both domestic and foreign customers. On November 30, 2011, the Department of Commerce (DOC), Office of Export Enforcement, received a voluntary self-disclosure from Amplifier Research.

Many of their products are classified under an Export Control Classification Number and require a license for export to most destinations outside of Europe. These amplifiers are controlled for National Security reasons, and have application in military systems, which include radar jamming, weapons guidance systems, and other uses. Amplifier Research became aware that Gormley had committed numerous violations of government regulations, between June 7, 2006 and June 28, 2011.

Gormley pleaded guilty on October 17, 2012, admitting that he had: altered invoices and shipping documents to conceal the correct classification of amplifiers to be exported so that they would be shipped without the required licenses; listed false license numbers on export paperwork for defense article shipments; and lied to fellow employees about the status and existence of export licenses. Gormley's actions resulted in at least 50 unlicensed exports of national security sensitive items to destinations including China, India, Hong Kong, Taiwan, Thailand, Russia, Mexico, and other countries. When Gormley admitted to the conduct, he explained it by saying he was "too busy" to obtain the licenses. Gormley claimed he was overwhelmed at work and that was his only excuse.

*(Continued below)*

In handing down her sentence, U.S. District Court Judge Gene E.K. Pratter cited the risk to the community in allowing National Security goods to be exported without proper licenses and the need for deterrence. In addition to the prison term, Judge Pratter ordered three years of supervised release and fined Gormley \$1,000.

The case was investigated by the Department of Commerce and was prosecuted by Assistant United States Attorney Nancy Winter.

UNITED STATES ATTORNEY'S OFFICE,  
EASTERN DISTRICT of PENNSYLVANIA Suite  
1250, 615 Chestnut Street, Philadelphia, PA  
19106

Contact: PATTY HARTMAN, Media Contact,  
215-861-8525

#### **Statement of Under Secretary of Commerce Eric L. Hirschhorn:**

"As the substantial sentence in this case demonstrates, we will not allow our national security to be compromised by individuals who flout our nation's export control laws. The egregious violations in this case weren't committed by accident but were perpetrated by an informed individual who intentionally violated the law."

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The BIS Web Site Team



## **NHTSA Issues Final Rule on Safety Requirements for Spare Tires**

The National Highway Traffic Safety Administration (NHTSA) issued a final rule, which requires imported and domestic spare tires to meet tougher product testing requirements. As reported the NHTSA revised Federal Motor Vehicle Safety Standard (FMVSS) No. 109 by changing the test pressure for the physical dimensions test for T-type tires (temporary use spare tires) from 52 pounds per square inch (psi) to 60 psi. As reported, the increase in test pressure for the physical dimensions test "will marginally increase the stringency of the test" and will align FMVSS No. 109 with international and voluntary consensus standards.

The final rule is effective 07/17/13. Any petition for reconsideration must be received by 03/04/13 and submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., West Building, Washington, D.C. 20590. NHTSA contact: Marisol Medri, 202-366-2720.

NHTSA final rule:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-17/pdf/2013-00938.pdf>

## **ECHA Posts Information on Cadmium in Plastics**

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

\*The European Chemicals Agency (ECHA) is examining the case for expanding the restriction on cadmium in plastics from the current 16 specific plastic materials listed. ECHA is asking for evidence to help identify the impact of this potential expansion.

The ECHA is asking for people to submit comments via a form on their website before 02/11/13. In particular, the Agency seeks to identify any additional, currently unrestricted, plastic materials in consumer goods that are either made in the EU or imported.

[http://echa.europa.eu/view-article/-/journal\\_content/d0dac9de-de4b-4d18-99c4-1260bb2a63dd](http://echa.europa.eu/view-article/-/journal_content/d0dac9de-de4b-4d18-99c4-1260bb2a63dd)

## CBP Issues Ruling on Apple iPad Cases

U.S. Customs and Border Protection (CBP) disagreed with Apple's assertion that leather and plastic iPad Smart Covers should be classified as accessories for automatic data processing (ADP) machines. CBP responded to Apple's request in HQ H216396, 10/09/12. According to Apple, plastic and leather iPad Smart Covers, can serve as stands, protective covers, battery conservation devices, and therefore should be classified under heading 8473, used for accessories for ADP machines.

Apple reported the covers help preserve iPad batteries through an embedded magnet that automatically puts the iPad in sleep mode when the cover is closed and the cover can be turned into a stand by folding it under the device. While heading 8473 explicitly excludes covers, the additional features mean the Smart Covers shouldn't be excluded, according to Apple.

CBP disagreed with Apple's take on the classification commenting, "Although the iPad Smart Cover has magnets and a folding function, it nevertheless functions as a cover because it is designed to cover the iPad." In addition, CBP noted it is also "advertised and marketed as a 'cover.'" In fact, the principal purpose of the merchandise is to protect the iPad when it is not in use, either when it is being stored or carried.

This is the essence of what a cover does. That it can also serve as a stand does not make it any less of a cover. Without a heading that describes the item entirely, CBP looked at the materials involved that give the covers their essential character to determine classification. The plastic cover consists of hard plastic, microfiber textile lining and small magnets.

CBP advised the plastic cover gives the item its essential character and is therefore classifiable under heading 3926 as articles of plastics; with a duty rate of 5.3 percent. The leather similarly gives the leather case its essential character, making it classifiable under heading 4205 as other articles of leather; with free duty rate.

*(Continued above)*

According to a CBP spokeswoman, this ruling was highlighted by the agency by posting it to CBP's website, something not usually done by the agency. CBP chose to publicize the issuance of this ruling because it involved a product that is well known to the trade and importing public community, thereby illustrating the broad impact of a ruling we just issued.

CBP ruling:

[http://www.cbp.gov/xp/cgov/trade/legal/rulings/cent\\_rulings/hq\\_hruling\\_102012.xml](http://www.cbp.gov/xp/cgov/trade/legal/rulings/recent_rulings/hq_hruling_102012.xml)

## ECHA Posts Information on Substances of Very High Concern (SVHC)

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

\*Ten chemicals were labeled as Substances of Very High Concern (SVHCs) by the European Chemical Agency (ECHA). The chemicals are classified as carcinogenic or toxic to reproduction and used in applications where there is potential for worker exposure.

For each substance a deadline, the sunset date, is suggested after which companies will only be able to use it within the EU if an authorization has been granted.

[http://echa.europa.eu/view-article-/journal\\_content/title/echa-recommends-10-svhcs-for-authorisation](http://echa.europa.eu/view-article-/journal_content/title/echa-recommends-10-svhcs-for-authorisation)



## CBP Bulletin January 9, 2013 - Docking Station for MP3 Player

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 47, No. 3); CBP is:

\*Proposing to revoke rulings regarding the tariff classification of docking stations with built-in radios for MP3 players.

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.

### MP3 Player Docking Stations with Built-in Radio

The docking stations allow the user to play music from an iPod or other MP3 player. The music, which is stored on the MP3 player, is transmitted to the speakers for broadcasting. According to CBP, its previous rulings are incorrect because the subject docking stations with radios do not contain sound recording or reproducing apparatus. As a result, models of the subject merchandise that are capable of operating without an external source of power, are classified in one of two subheadings based on whether they are valued not over \$40, incorporate a clock or auto-timer, are not in combination with any other articles, and are not designed for motor vehicle installation.

**Current:** 8527.91.60, Free.

**Proposed:** For docking stations that are capable of operating without an external source of power (NY R02550, NY M84663, NY M86676, and NY R04615): Either 8527.19.10, Free, **or** 8527.19.50, 3%.

For docking stations incapable of operating without an external source of power and include a clock (NY R03835, NY N010738, NY N015651, NY N024500, NY N047842, NY N092825, NY N092831, NY N092834, NY N021097, and NY N007861): Either 8527.92.10, Free, **or** 8527.92.50, 3%.

**Proposed for Revocation:** NY R02550 (2005), NY R03835 (2006), NY M84663 (2006), NY N010738 (2007), NY N015651 (2007), NY N024500 (2008), NY N047842 (2009), NY N092825 (2010), NY N092831 (2010), NY N092834 (2010), NY N021097 (2008), NY M86676 (2006), NY R04615 (2006), and NY N007861 (2007)

**Proposed New Ruling:** HQ H216719

## BIS Announces Export Control Conference in Newport Beach

The Bureau of Industry and Security (BIS) opened registration for its Eighth Annual Export Control Forum, set for 02/25\*26/13 in Newport Beach, CA.

The conference will be a streamlined, scheduled for a day and a half instead of three days. Policy management, technical, legal, and enforcement personnel from BIS and other relevant agencies will provide detailed information on recent and upcoming export control changes.

Day one will conclude with a networking reception. Day two will continue in plenary session. There will be no breakout sessions as in previous years. BIS advised it would post the agenda for the conference shortly.

**Cost:** Eighth Annual Export Control Forum costs \$525.

### Registration:

<http://www.cvent.com/events/8th-annual-export-control-forum/event-summary-8baaf6d4fa054b97a8f76830c2e23137.aspx>

**Forum Information:** <http://beta-www.bis.doc.gov/index.php/about-bis/newsroom/81-compliance-a-training/export-administration-regulations-training/seminar-details/479-newport-beach-ca-8th-annual-ecr-2013>





## EPA Issues FR Notice on Labeling Regulations for Pesticides Intended for Export

In a Federal Register notice the Environmental Protection Agency (EPA) advised they revised the regulations on the labeling of pesticide products and devices intended solely for export. The new rules clarify which provisions apply under various circumstances and increase the specificity of the regulations by requiring that people who transfer unregistered pesticide products between registered establishments operated by the same producer within the U.S. must also comply with the requirements if those products are intended solely for export at the time of such transfer.

According to the EPA, most of the labeling requirements for export pesticide products already appear in other existing requirements, so the burden of adding the additional statement to unregistered products or devices intended solely for export that are shipped between registered establishments operated by the same producer would be negligible. The labeling change may be easily accomplished using commonly available word processing software, and shall be phased in as part of normal business operations.

**The rule is effective 03/19/13.**

EPA contact: Vera Au, phone# 703-308-9069 or [au.vera@epa.gov](mailto:au.vera@epa.gov)

EPA FR notice:  
[http://www.ofr.gov/OFRUpload/OFRData/2013-01055\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2013-01055_PI.pdf)



## Recent Export Violations Update

**1.** On October 18, Mohammad Reza Hajian was sentenced to four years in federal prison for conspiracy to violate the International Emergency Economic Powers Act (IEEPA), and the Iranian Transaction Regulations (ITR). Mr. Hajian's sentence also included a one-year term of supervised release, and the forfeiture of \$10 million in traceable proceeds from the offenses.

Mr. Hajian's violations, which involved three of his companies, centered on the illegal export of computers and related equipment to Iran. Specifically, Mr., Hajian and his companies exported computer and related equipment to Iran in violation of the U.S. embargo. Mr. Hajian and others involved in the transactions transshipped both the products and payments to Iran via the United Arab Emirates, and utilized fake identifies and fake end-users.

**2.** On December 5, the Department of Justice announced it had arrested four individuals on charges concerning the unauthorized export of goods, including carbon fiber and helicopter component parts, to Iran and China. The individuals involved are accused of taking deliberate measures to conceal the true nature of the transactions.

For example, in one of the transactions involving carbon fiber, the individual arranged for the procurement of carbon fiber from a U.S. supplier, its export to Europe, its subsequent re-export to the United Arab Emirates via a European-based freight forwarder, and finally to its ultimate destination of Iran.

In another transaction involving carbon fiber, one of the individuals arranged for the export of carbon fiber from the U.S. to Belgium and then China by utilizing false statements on the shipper's export declaration forms related to the ultimate consignee, ultimate country of destination, and licensing status.

*(Continued below)*

In a transaction involving the helicopter component parts, one of the individuals arranged for the export of those parts to Iran via South Korea. The parts at issue had military uses, such as reconnaissance, tactical insertion and as missile platforms.

The four men charged included an Iranian citizen, a Turkish citizen, a dual U.S. and Iranian citizen, and a U.S. citizen, yet another case illustrating that the threat of export violations often comes from within our own borders.

In another example, in October, ARC Electronics was indicted in connection with the illegal export of high-tech microelectronics from the U.S. to Russia. ARC's owner, Alexander Fishenko, is a naturalized U.S. citizen.

**3.** On December 3, the China Nuclear Industry, Huaxing Construction Company, Ltd. pleaded guilty to conspiring to violate the IEEPA and the EAR in connection with the illegal export of high-performance epoxy coatings from the U.S. to the Chashma II Nuclear Power Plant in Pakistan. Huaxing's guilty plea is related to several other cases spanning several years and involves a large-scale investigation.

**4.** In 2010, PPG Paints Trading Co. Ltd., located in Shanghai, pleaded guilty to similar conspiracy charges. PPG Paints Shanghai is a subsidiary of the U.S. Company PPG Industries. Together, PPG Industries and PPG Shanghai paid \$3.75 million in criminal fines. Recently, PPG Paints Shanghai's highest executive also pleaded guilty to conspiracy. Huaxing, which is a People's Republic of China owned, operated, and controlled company, was the entity that purchased the epoxy coatings for use in the Pakistani reactor.

Huaxing agreed to pay a \$2 million criminal fine, complete a five-year period of corporate probation, implement an export compliance program, and be subject to multiple third-party audits over the next five years.

The U.S. government also actively searches for persons intending to violate the laws.

*(Continued above)*

**5.** On December 11, Yen Ling Chen, a Taiwanese citizen, pleaded guilty to violating the IEEPA for attempting to export weapons-grade carbon fiber to Taiwan. Chen was arrested in the U.S. after contacting an undercover government agent to negotiate the purchase of carbon fiber, wiring a deposit for a sample, and then traveling to the U.S. from Taiwan to obtain the sample.

**6.** On December 19, an Iranian corporation was charged in the U.S. with allegedly exporting more than \$30 million in computer-related goods to Iran in violation of the U.S. embargo. Business Machinery Worldwide (BMW), located in Iran, and three subsidiaries based in the United Arab Emirates, as well as numerous officers and directors, is accused of conspiring to violate the IEEPA.

Authorities allege that BMW solicited computer goods from the U.S. and shipped them to Iran via the United Arab Emirates in violation of U.S. law. BMW allegedly communicated to its employees and affiliate companies that the U.S. suppliers should "never find out that the manager of [a subsidiary] is an Iranian."

**7.** On December 21, two nationals of Singapore were extradited to the U.S. to stand trial for an alleged fraud conspiracy related to the illegal export of military antennae from the U.S. to Singapore and Hong Kong. Each individual faces one charge of conspiracy to defraud the United States by violating the Arms Export Control Act (AECA). The two individuals allegedly caused 55 military antennas to be exported from the U.S. to Singapore and Hong Kong without the required license from the Department of State.

The defendants allegedly undervalued the products to avoid filing SEDs (spell out of first reference), used false names, and used false front companies to facilitate the exports.

***In each of the cases above, the individuals and entities involved took steps to conceal the true nature of their transactions, the parties involved, and the ultimate end-use and end-users in the transactions. Some cases appear to have only involved a few individuals, while others involved multiple entities located in several countries. These cases serve as a reminder of the severe consequences for violations of the law, and the importance of conducting proper due diligence in transactions involving products controlled for export from the U.S.***

## Federal Agents Converge on Woburn Business

(Search Warrant Executed at Agiltron, Inc.)

Several Homeland Security agents could be seen outside Agiltron Inc., at 15 Presidential Way, Woburn M.A. Sources told News Center 5 that the company, which has several military contracts, may have **"sold technology to people who should not have it."**

Few details were released about the purpose for the warrant, however, officials said it was not immigration/work site related. The company, which is headquartered in Woburn, is a manufacturer of optical devices.

Agiltron is a high-tech firm specializing in fiber optics, with manufacturing facilities in Woburn. The company describes itself on its website as a provider of industry-leading "optical communication and sensing solutions." The purpose of the search was not disclosed. Woburn police officers are also at the scene. Check back for more information as it becomes available.

In 2009, Agiltron was awarded a contract from the Naval Air Warfare Center Aircraft Division for a fiber optic kit used by technicians to repair and maintain aircraft, according to the company's website.

Read more:

<http://www.wcvb.com/news/local/boston-north/Federal-agents-converge-on-Woburn-business/-/11984708/18247898/-/inhkfdz/-/index.html#ixzz2IpKopV9M>

Read more: Homeland Security, ICE agents raid Woburn business Agiltron - Woburn, MA - Woburn Advocate <http://www.wickedlocal.com/woburn/news/x1631908159/Homeland-Security-ICE-agents-raid-Woburn-business-Agiltron#ixzz2IpJZuUgs>



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