



EIB World Trade Headlines

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November 2012- Vol4, Issue 20

Hurricane Sandy Update

*The Ports of New York and New Jersey (PONY/NJ) are still shut down. They are expecting to announce their status later on Wednesday 10/31/12.

*Other East Coast Ports affected by the Hurricane are now open and resuming receiving ships.

*Carriers have not officially indicated if they would divert cargo destined for PONY/NJ to other ports on the East Coast. We have heard that this is starting to happen with some carriers and others have indicated that they are considering diversion.

*Railroads servicing these ports are experiencing delays. One Railroad announced a 72-hour delay.

*Airports are starting to operate again. However, there will be delays due to repositioning of aircraft. LaGuardia is still not operating.

*Most major roads and bridges are open to truck traffic. Some local roads are still closed.

*The Holland Tunnel is closed.

*The Electric Company that services most of Northern New Jersey is not expecting power to be fully restored until the beginning of next week – outage map at http://www.pseg.com/home/customer_service/outage_info/outagemap.jsp

*New York City and suburbs still have major areas without power.

NEWSLETTER NOTES

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*ICE Announces Arraignment of Import for False Import Documents to Avoid AD Duties

*State Department To Hold Conference Call on Panama FTA December 11, 2012

* SPECIAL SECTION
U.S. Commercial Service - Resources for Going Global

*List of Upcoming Events

BIS Issues Critical Technology Assessment on Night Vision Equipment Market

The Bureau of Industry and Security (BIS) issued a Critical Technology Assessment on night vision focal plane arrays, sensors, and cameras. The report, compiled by the BIS Office of Technology Evaluation, was done to examine the impact of export controls on key existing or emerging technologies that are subject to the Export Administration Regulations (EAR). The night vision equipment examined in this assessment is controlled under U.S. Munitions List (USML) Category XII and EAR ECCNs 6A002 and 6A003.

The report noted a spike in both U.S. and non-U.S. dual-use uncooled infrared camera sales from 2009-2010. This spike in sales coincides with the implementation of the 2009 rule that reduced licensing requirements to some regime partners for dual-use uncooled infrared cameras controlled under ECCN 6A003. There is evidence that certain items across all types of night vision components and equipment are available from outside of regime members. These countries include Belarus, China, India, Israel, Singapore, and Taiwan.

Complete BIS report: http://beta-www.bis.doc.gov/index.php/licensing/forms-documents/doc_view/630-night-vision-assessment

ECHA Posts Information for Companies to Verify Their Registrations

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

*The European Chemical Agency (ECHA) advises registrants to check their company information in the REACH-IT system. ECHA notes after the system is updated in November, it will provide full transparency to all registrants who have used the same numerical identifier for their substance in their dossiers for joint submission and data sharing purposes. To avoid unexpected disclosure, ECHA is advising companies to double check their dossiers ahead of the update.

ECHA notice: http://echa.europa.eu/web/guest/view-article/-/journal_content/ab5ae030-41ed-41d0-91d0-e4ac75468406

U.S. Signs Agreement with Israel to Ease U.S. Telecommunications Exports

According to the U.S. Trade Representative's (USTR), the U.S. and Israel recently signed an agreement to ease burdens on U.S. companies, especially smaller manufacturers, seeking to export telecommunications products to Israel. The agreement means Israeli regulatory authorities will now accept tests that recognized U.S. laboratories perform to determine the conformity of telecommunications equipment with Israeli technical requirements, rather than requiring additional testing by Israeli labs before American products can be sold in Israel.

USTR advises it also allows the U.S. and Israel to agree in the future to accept equipment certifications from recognized conformity assessment bodies in the U.S. and Israel on a mutual basis. The Agreement covers equipment subject to telecommunications regulation, including wire and wireless equipment, and terrestrial and satellite equipment. The agreement will take effect after both the U.S. and Israel complete all internal legal requirements.

Agreement text:

http://www.pdfdownload.org/pdf2html/view_online.php?url=http%3A%2F%2Fwww.ustr.gov%2Fsites%2Fdefault%2Ffiles%2FUS-Israel%2520MRA%2520Text.pdf

USTR notice: <http://www.ustr.gov/about-us/press-office/press-releases/2012/october/us-israel-telecomm-mou-eases-way-for-exports>



SPECIAL SECTION **Export Enforcement Coordination Center**

The Role of E2C2

Braumiller Schulz, LLP www.globaltradelaw.net

Created by Executive Order 13558 in October 2010, the Export Enforcement Coordination Center came into being as a means to further the consolidation of export enforcement among U.S. government agencies. The Export Enforcement Coordination Center is commonly referred to by its catchy acronym "E2C2".

The role of the E2C2 is to coordinate and facilitate enforcement efforts between various government agencies involved in export controls, including: Departments of Homeland Security, Justice, State, Commerce, Treasury, Defense and Energy, the Director of National Intelligence, Customs and Border Protection, Defense Criminal Investigative Service, National Nuclear Security Administration and Defense Security Service. The center is managed and operated by Immigration and Customs Enforcement (ICE) of the Department of Homeland Security.

ICE's investigative arm, known as the Homeland Security Investigations (HSI) Directorate, is directly responsible for overseeing the activities of E2C2. HSI officers are permanently staffed at the center, along with representatives of the participating government agencies outlined above. HSI is the largest investigative arm within the Department of Homeland Security, and HSI officers have full statutory authority to investigate and enforce criminal violations of all U.S. export control laws, including those relating to military items and dual use items (ie, those items with both a commercial and military application). HSI investigates a wide range of trade fraud cases, and one of its main priorities is to combat theft of proprietary U.S. technology.

The E2C2 opened its doors in April 2012, and enforcement efforts are under way. The central objective of the center is to promote enforcement of the export control laws in instances where the jurisdiction of multiple government agencies are involved. In the past, separate agencies often did not share information critical to identifying a potential violation and subsequent investigation with each other.

(Continued above)

This usually occurred due to a lack of manpower resources. The E2C2 aims to address this bottleneck of information gathering. The individual government agencies will still maintain their separate enforcement programs, but the E2C2 will act as the facilitator of these separate enforcement regimes.

The center was created to support the following functions in facilitation of export enforcement:

- *Coordinating the deconfliction of criminal and administrative enforcement authorities and agencies engaged in export licensing;
- *Acting as the primary point of contact between enforcement authorities and agencies engaged in export licensing;
- *Coordinating law enforcement public outreach activities related to U.S. export controls; and
- *Establishing government-wide statistical tracking capabilities for U.S. export enforcement activities.

The E2C2 is one of the four main steps in the President's overall export control reform program, which was first announced in 2007. The establishment of the center is an important component in the progression of export control reform, and is a strong indication of the government's adamant commitment to an overhaul of the export control system.

ITA Issues FR Notice on Trade Mission to Chile for Renewable Energy and Energy Efficiency

The International Trade Administration (ITA) will lead a renewable energy and energy efficiency trade mission to Chile next April. The trade mission will directly precede the International Fair of Technologies, which will be held in Chile on April 17-19, 2013.

The mission will focus on creating a policy environment conducive to growth in Chile's renewable energy and energy efficiency market; and introducing U.S. renewable energy and energy efficiency exporters to key Chilean Government officials. In addition, the mission will promote the competitiveness of U.S. wind, solar, geothermal, biomass, hydropower, waste-to-energy, smart grid, and energy efficiency exporters.

Recruitment for the mission will begin immediately and conclude 03/01/13.

ITA FR

notice: http://www.ofr.gov/OFRUpload/OFRData/2012-25647_PI.pdf



OECD Announces Online Portal for Listings of International Product Recalls

The Organization for Economic Cooperation and Development (OECD) recently launched an online portal to give international consumers and others easy access to the latest information on product recalls in Australia, Canada, Europe and the U.S.

The web portal, at <http://globalrecalls.oecd.org>, allows users to check whether a product they plan to buy has been taken off shelves in another country. In addition, OECD advised businesses, such as importers or retailers, will be able to react quickly and pull products as soon as concerns arise.

OECD notice

<http://www.oecd.org/newsroom/oecdlaunehesonlineportaltoboostproductsafety.htm>



CBP Posts FAQ on Korea FTA

U.S. Customs and Border Protection (CBP) posted a list of frequently asked questions on the U.S.-Korea Free Trade Agreement (KORUS), which took effect for qualifying goods entered or withdrawn from warehouse for consumption on 03/15/12. The FAQ provides insight on KORUS rules of origin, regional value content (RVC) the merchandise processing fee (MPF) exemptions, and more.

CBP FAQ KORUS

http://cbp.gov/linkhandler/cgov/trade/trade_programs/international_agreements/free_trade/korea/korea_fta_faqs.ctt/korea_fta_faqs.pdf

CBP Posts Updated Lists of Active AD and CVD Cases

U.S. Customs and Border Protection (CBP) posted for review updated spreadsheets showing active antidumping and countervailing (AD/CV) duty cases and the associated case numbers, ISO country codes, tariff numbers, and short descriptions of each case as of 10/01/12.

Active antidumping cases:

http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/adcvd_data/anti_dump.ctt/anti_dump.xls

Active countervailing cases:

http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/adcvd_data/countervailing.ctt/countervailing.xls

CBP Posts October 2012 Customs Broker Exam and Answer Key

U.S. Customs and Border Protection (CBP) posted for review the October 2012 customs broker exam:

http://cbp.gov/linkhandler/cgov/trade/trade_programs/broker/broker_exam/exam_and_key_downloads/oct_2012_exam.ctt/oct_2012_exam.doc

Answer Key

http://cbp.gov/linkhandler/cgov/trade/trade_programs/broker/broker_exam/exam_and_key_downloads/oct_2012_answers.ctt/oct_2012_answers.pdf

CBP Issues FR Notice Adopting Final Rule Amending Regulations for Peru FTA

U.S. Customs and Border Protection (CBP) announced in the Federal Register, they are adopting a final rule amending its regulations for the preferential tariff treatment and other customs-related provisions of the U.S.-Peru Trade Promotion Agreement (PTPA or Peru FTA) by adding a new subpart Q to 19 CFR Part 10, etc. CBP reported it received no comments on its interim final rule, adopted in November, and only made a technical change from the interim rule.

According to CBP, the technical correction is made to Section 10.918(c)(1)(ii) to reflect amendments to additional U.S. Note 4(d) to subchapter XXI of chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS), whereby the tariff numbers of subheading "5402.19.30," and subheading "5402.19.60" were added. The technical correction is necessary to conform the CBP regulations to the current version of the HTSUS.

President Bush issued Proclamation 8341, which amended the USHTS to implement the PTPA effective for goods entered or withdrawn from warehouse for consumption on or after 02/01/09.

Modifications and entrance details are posted at: <http://www.gpo.gov/fdsys/pkg/FR-2011-11-03/pdf/2011-28471.pdf>

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CBP FR Notice (10/16/12)

http://ofr.gov/OFRUpload/OFRData/2012-25668_PI.pdf

-CBP Bulletin October 10, 2012-

Work Footwear, LED Task Lights, Plastic Cups, Insulated Cooler Bags

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 46, No. 42); CBP is:

*revoking and modifying a ruling on the classification of work footwear;

*revoking and modifying a ruling on the classification of LED Task Lights;

*revoking and modifying a ruling on the classification of Plastic Cups; and

*proposing to revoke three rulings concerning the tariff classification of Insulated Cooler Bags (Comments due by 11/09/12).

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.

Work Footwear

Sears SAFETRAX brand footwear. Most styles in question are below-the-ankle, lace up shoes with outer soles of rubber/ plastics and uppers of predominantly leather. One style is a slip-on shoe. The seven styles of footwear under reconsideration are the following style numbers: 65005, 65021, 65025, 65118, 65120, 65131, and KM-0112.

Style number 65029 in NY N039198 is not at issue in this reconsideration. CBP previously ruled that the footwear didn't meet the requirements of "work footwear." Sears submitted evidence showing the footwear is marketed for food processing plants, restaurants, supermarkets, hospitals, and other industrial sites. In light of the evidence provided by Sears and an examination of samples of the footwear, these articles meet the requirements enumerated in Statistical Note 1(a) of Chapter 64, HTSUS, to be considered work footwear.

(Continued above)

*Old HTS/Rate: 6403.99.6075, 8.5% ("footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: other footwear: other: other: other: other: for men, youths and boys: other: other: for men: other".) 6403.99.9065, 10% ("footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: other footwear: other: other: other: other: for other persons: valued over \$2.50/pair: other: other: for women: other.")

*New HTS/Rate: 6403.99.6025, 8.5% as ("footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: other footwear: other: other: other: other: for men, youths and boys: work footwear.") 6403.99.9015, 10% (footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: other footwear: other: other: other: other: for other persons: valued over \$2.50/pair: work footwear.")

LED Task Lights

(Nightstick Task Light) - A cylindrical battery-powered hand-held work light that measures about 11 ½ inches high by 2 inches in diameter at its widest point. It is made of plastic, features sculpted finger grooves for a positive grip, and is powered by an internal Ni-MH (nickel-metal hydride) battery. At one end of the Nightstick is an LED (light emitting diode) bulb and a reflector under a clear lens. Along one side of the upper part of the housing are 60 LED bulbs, arranged in a 4 by 15 grid, under a clear lens. On the other side of the housing is a push button switch that cycles the light between flashlight on, grid on, and off, as well as a connection for a battery charger adapter.

The Nightstick also features two removable plastic cuffs designed to snap onto the body of the light. One cuff provides a magnet for mounting the light on any flat, ferrous surface; the other a swiveling combination hook/stand. The Nightstick Task Light is packaged for retail sale in a plastic clamshell case.

(Continued below)

CBP notes that while the Nightstick exhibits the general physical characteristics of a flashlight, it is also marketed, sold and can be used in a manner that is inconsistent with flashlights. While the device in question, in both its flashlight and flood light modes, projects a beam of light (albeit a wider beam when using the "floodlight" function), is battery-operated and is capable of being held in the hand by its housing, it also functions as something beyond that of a flashlight due to the capabilities imparted by the magnetic mount, combination hook/stand and LED bank. Therefore,

CBP could not determine its principal function. When a principal use can't be determined, the products are to be classified in the heading that occurs last in numerical order among those that equally merit consideration for classification.

*New Ruling: HQ H081686 (dated 08/15/12), revokes NY N077436 (2009)

*Old HTS/Rate: 8513.10.20, 12.5% (Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos) other than lighting equipment of heading 8512; parts thereof: lamps: flashlights.)

*New HTS/Rate: 8513.10.40, 3.5% (Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos) other than lighting equipment of heading 8512; parts thereof: lamps: other.)

Plastic Cups

One-ounce plastic cups with measurements on the side, used primarily in the medical industry. The cups come from Hong Kong and are made of 100 percent polypropylene. The cups are graduated in shape. The cups have markings on the plastic denoting various types of measurements such as: ounce, teaspoons, drams and centimeters and millimeters. CBP ruled the plastic cups to be other plastic tableware and kitchenware. CBP has previously advised such products are similar in that they are of plastic, are used in the household, and are reusable. CBP now says its past ruling was mistaken because it no longer believes that the subject plastic cups are only used in the house and the cups are too flimsy to be reusable.

(Continued above)

*New Rulings: HQ H176516 (dated 09/25/12), revokes NY H81035 (2001)

*Old HTS/Rate: 3924.10.5000, 3.4% (Tableware, kitchenware, other household articles...of plastics: tableware and kitchenware: other.)

*New HTS/Rate: 3926.90.99, 5.3% (Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.)

Insulated Cooler Bags

Several styles of insulated cooler bags from China; the cooler bags are largely made up of polyvinyl chloride plastic (PVC) sheeting material and polyester textile material. According to CBP, Styles 9000838 (NY N024831), 453474, 453469, 453471, 416959, and 416961 (NY N024015) have an outer surface composed mostly of plastic. These styles are therefore classified in subheading 4202.92.10. Style 453799 (NY N024016) has an outer surface area composed primarily of textile. Style 453799 is thus classified in subheading 4202.92.08.

*Current: Styles 9000838, 453474, 453469, 453471, 416959, 416961: 4202.92.0807,7%. Style 453799: HTS 4202.92.1000, 3.4%

* Proposed: Styles 9000838, 453474, 453469, 453471, 416959, and 416961: HTS 4202.92.1000, 3.4%. Style 453799, HTS 4202.92.0807,7%.

*Proposed for revocation: NY N024831 (2008), NY N024015 (2008), and NY N024016 (2008)

*Proposed new ruling: HQ H088427

CBP Bulletin (10/10/12)
http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2012/vol46_10102012_no42/gen42.ctt/gen42.pdf

CBP Issues Information on Modifications to DR-CAFTA Textile/Apparel Preference Rules

U.S. Customs and Border Protection (CBP) summarized the modifications to textile and apparel preference rules as part of the Dominican Republic-Central America-U.S. Free Trade Agreement (CAFTA-DR). As reported, on 09/26/12, the U.S Trade Representative (USTR) published a notice in the Federal Register announcing 10/13/12 as the effective date for these certain modifications to the textile and apparel preference rules.

CBP notes three of the modifications to the CAFTA-DR textile and apparel rules affect the Agreement's short supply provisions (HTS GN 29 (m)(viii) and HTS 9822.05.01).

HTS General Note (GN) 29 (m)(viii) provides three separate short supply rules. Each of these provisions is amended to remove the requirement that any elastomeric yarn contained in the short supply yarns or fabrics be formed in the territory of one or more of the Parties to the Agreement. If such goods are made from a combination of short supply materials and originating materials, then the originating materials may contain up to 10 percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification (HTS GN 29 (n)) but any elastomeric yarn contained in the originating materials must be formed and finished in the territory of one or more of the Parties to the Agreement. The three short supply rules are:

- *Textile goods of chapters 50 through 60;
- *Apparel goods of chapters 61 and 62; or
- *Made-up textile goods of chapter 63 or 94

The short supply rule for apparel found in HTS GN 29 (m)(viii)(B) is modified so the rule applies to the outer shell, excluding not only collars and cuffs, but also ribbed waistbands in limited applications. Complete details posted for review. Other modifications include Sewing Thread Chapter Rule for Goods of Chapters 61 (rule 4), 62 (rule 4) and 63 (rule 2) and Product Specific Tariff Shift Rule for Women's and Girls' Woven Sleepwear.

As of 10/13/12, textile and apparel goods entered, or withdrawn, for consumption, must meet the amended rules under CAFTA-DR, found in HTS GN 29, in order to qualify for duty-free treatment. Any post entry preference claims filed for goods entered prior to 10/13/12, must comply with the CAFTA-DR rules in effect on the date of entry, according to CBP.

CBP notice

http://www.cbp.gov/xp/cgov/trade/priority_trade/textiles/tbts/dr_cafta.xml

FDA Issues Warning Letter to Importer of Medical Devices and Threatens Seizures and Civil Penalties

The Food and Drug Administration (FDA) sent a warning letter to medical device importer Primus Medical, alleging an inadequate response to an inspection that revealed deviations from Current Good Manufacturing Practices (CGMP) regulations and failure or refusal to furnish information required by Medical Device Reporting regulations. FDA alleged that Primus, which imports AC-powered hospital beds, violated CGMP regulations by:

1. failing to confirm that its suppliers, contractors, and consultants meet specified requirements;
2. not verifying design of the products; and
3. not implementing corrective action procedures.

According to FDA, Primus also failed to adequately evaluate complaints, as required by Medical Device Reporting Regulations. FDA has threatened seizure of merchandise, injunction, and civil penalties if Primus fails to correct the alleged violations.

FDA notice:

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm324169.htm>



CBP Posts China Aluminum Extrusion AD/CVD Webinar

U.S. Customs and Border Protection (CBP) posted the presentation slides from its webinar on the antidumping and countervailing (AD/CV) duty orders on aluminum extrusions from China. The presentation details the scope of the order, pointing to specific products, customs rulings, and International Trade Administration (ITA) scope determinations to clarify which aluminum extrusions are subject to the AD/CV duty orders. According to the presentation, the following aluminum extrusions are subject to AD/CV duties if they are made from a qualifying alloy:

- *Profiles (always extruded) (HTS heading 7604);
- *Pipes and tubes (if extruded) (HTS heading 7608);
- *Rod and bars (if extruded) HTS heading 7604);
- *Incomplete products or parts of unfinished products (if extruded);
- *Unfinished heat sinks;
- *Carpet trim, door thresholds, electrical conduits, fence posts;

According to CBP, merchandise subject to the orders may include products that are:

- *Composed of one of the included aluminum alloys in the case (with an Aluminum Association series number commencing with 1, 3 or 6)
- *Manufactured by extrusion method;
- *Not a finished product (i.e. not complete);
- *Not a kit within meaning of the scope, e.g. aluminum shower door kits without the glass;
- *Goods identified by reference to their end use as carpet trim, heat sink, etc.

(Continued above)

CBP noted that Aluminum Association alloy designations commencing with the number 1, containing not less than 99% aluminum by weight, are considered alloys in the trade and referred to as alloys in the scope, but are actually not classifiable as alloys for tariff purposes.

In addition, the following merchandise is always out-of-scope, and not subject to the AD/CV duty order on aluminum extrusions:

- *Finished products;
- *Finished heat sinks as defined in the scope;
- *Complete kits;
- *Products not extruded;
- *Products not made of a qualifying alloy

CBP presentation:

http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/alumunium_orders_webinar/

ITA Issues FR Notices on Final Determination for AD and CVD Rates on China Solar Cells

The International Trade Administration (ITA) issued its final affirmative antidumping duty (ADD) determination on crystalline silicon photovoltaic cells, whether or not assembled into modules, from China (A-570-979). AD rates slightly increased for solar cells exported by Wuxi Suntech, but fell for solar cells exported by Trina Solar and 59 separate rate respondents. This final determination, which is effective 10/17/12, is expected to be implemented by U.S. Customs and Border Protection (CBP) soon.

In addition, the ITA continued to find that critical circumstances exist for Trina, the separate rate respondents, and the China-wide entity, and is instructing CBP to continue to suspend liquidation of all imports of subject merchandise exported by these companies that were entered on or after 90 days prior to the publication date of the preliminary determination (i.e., on or about 02/25/12).

(Continued below)

However, in a reversal of its preliminary determination, the ITA advised critical circumstances do not exist for Wuxi Suntech. The ITA will direct CBP to suspend liquidation of all imports of subject merchandise entered on or after 05/25/12. The ITA also reported it will instruct CBP to issue a refund for all entries of subject merchandise that previously were subject to cash deposit requirements because of its preliminary determination of critical circumstances. The ITA will instruct CBP to require an AD cash deposit or the posting of a bond, for all imports of subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after 10/17/12, equal to the posted revised AD rates.

ITA Contact – Jeffrey Pedersen (202) 482-2769

ITA FR Notice

http://www.ofr.gov/OFRUpload/OFRData/2012-25580_PI.pdf

The International Trade Administration (ITA) issued its final affirmative countervailing duty (CVD) determination on crystalline silicon photovoltaic cells, whether or not assembled into modules, from China (C-570-980), which increased the CV rates for all Chinese companies. Although this final determination takes effect 10/17/12, ITA will only require CV cash deposits of estimated CV duties if it issues a CV order. The ITA has instructed CBP to continue the suspension of liquidation of all entries from 12/27/11 through 07/23/12.

The ITA has also instructed CBP to discontinue the suspension of liquidation for CV duty purposes and the collection of CV duty cash deposits or bonds for subject merchandise entered on or after 07/24/12. According to the ITA, it will issue a CV duty order, reinstate the suspension of liquidation, and require a cash deposit of estimated CV duties for entries of subject merchandise at the revised posted CV rates if the International Trade Commission (ITC) issues a final affirmative injury determination: **Note that there is no CV duty liability during the "gap period" of 07/24/12 until the date an ITC final affirmative injury determination is published in the Federal Register.**

ITA FR Notice (10/17/12)

http://www.ofr.gov/OFRUpload/OFRData/2012-25564_PI.pdf

-SPECIAL SECTION-

Food Safety Modernization Act Update (Registration Opens October 22, 2012)

**Mitchell Silberberg & Knupp
LLP www.msk.com**

New Biannual Registration Requirement

On January 4, 2011, 21 U.S.C. § 350d was amended by the Food Safety Modernization Act (FSMA), adding the requirement that all food facilities, foreign and domestic, must register with the Food and Drug Administration (FDA). This requirement expanded the registration mandate first enacted under the Bioterrorism Act in 2003. The law defines food facilities to mean those "engaged in manufacturing, processing, packing, or holding food for consumption in the United States."

Whether a domestic or foreign facility, "the owner, operator, or agent in charge of the facility" is expected to submit the registration. For facilities that were already registered, no new registration was required, until now. Section 102 of FSMA requires all food facilities to register every (2) two years between the dates October 1 and December 31. That said, however, the FDA held back opening registration while it was redesigning some application requirements.

On Saturday, October 20, the FDA released a guidance document –

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ucm324778.htm?source=govdelivery>

(Opening registration on October 22, 2012)

What does the FDA's new guidance policy state? First, it says that it is binding and not just a guidance or recommendation. The basis for making the guidance binding is a provision in the FSMA. When the Bioterrorism Act took effect, general food categories were identified at 21 C.F.R. § 170.3.

(Continued below)

That list is now being expanded through this latest guidance, and designating your products as they appear in these expanded categories will be a mandatory part of the new registration process. (New categories appear below.)

Companies are reminded that the failure to timely renew a registration means you have committed a prohibited act and are subject to criminal prosecution. While the law is not totally clear that goods imported without a valid facility registration being on file are also barred from importation as adulterated products, the FDA is expected to interpret the law that way, in which case the courts may have to settle this issue.

Even if importing your product is done seasonally, perhaps during the U.S. summer months, you will want to register between now and December 31, 2012. If you wait until your season starts, the FDA is currently saying your existing registration number will have become invalid due to lack of timely renewal, and you will have to obtain a new registration number prior to the first seasonal shipment. You may be happy to have a new registration number every two years, but if not, you will want to act starting now.

If you registered many years ago, perhaps when the Bioterrorism Act initially took effect, the first step is to find your PIN and password. If you cannot find them, the FDA recommends you simply file a new registration. While all the necessary mechanisms are not yet in place, the FDA expects to declare any existing registrations not timely renewed as invalid and to do so shortly after the registration period closes. Once that happens, you will no longer be able to use the old registration number.

New Fees For Re-inspections

One area causing a lot of concern is who is willing to act as U.S. agent. When the Bioterrorism Act took effect, a number of entities agreed to act as U.S. agents for foreign facilities. At that time, there was no responsibility put on the U.S. agent except to timely convey information and documents between the FDA and the foreign facility. Under FSMA, user fees for re-inspections will be imposed. As a result, many entities that were originally willing to act as U.S. agent are now declining to do so.

(Continued above)

Under FSMA, user fees for re-inspections will be imposed. As a result, many entities that were originally willing to act as U.S. agent are now declining to do so. When you file a registration, your U.S. agent will receive an email notifying it of its designation as such. At that point, the U.S. agent may decline to act on your behalf, and your registration will be invalid. Make sure the entity you designate as your U.S. agent is willing to act in that capacity.

The FDA has stated that, if it re-inspects a domestic facility, it will bill its charges to that domestic facility. To date, the FDA admits all re-inspections have been of domestic facilities. However, if re-inspection of a foreign facility occurs, the U.S. agent will be billed. Many entities are declining to act as U.S. agent out of concern for potential financial responsibility for those re-inspection fees. The FDA is also mandated to inspect foreign facilities. The number of such inspections required by the FSMA could go as high as 19,200 (600 in year one and doubling annually thereafter). The FDA admits it is currently inspecting about 1,200 foreign facilities yearly and does not anticipate increasing much beyond that number. However, foreign facilities should expect that their record keeping, processes, and products will be subject to review, just by other means, including cooperation between the FDA and foreign governments.

New Food Categories

By way of the newly issued guidance, FDA is adding categories for food for human and animal consumption. If any below food category includes an *, that means it was already listed:

For Human Consumption:

- *Acidified Food (see 21 C.F.R 114.3(b));
- *Baby (Infant and Junior) Food Products Including Infant Formula*;
- *Cheese and Cheese Product Categories: Soft, Ripened Cheese; Semi-Soft Cheese; Hard Cheese; Other Cheeses and Cheese Products;
- *Dietary Supplement Categories: Proteins, Amino Acids, Fats and Lipid Substances;

(Continued below)

*Animal By-Products and Extracts; Herbals and Botanicals;

*Fishery/Seafood Product Categories: Fin Fish, Whole or Filet; Shellfish; Ready to Eat (RTE) Fishery Products; Processed and Other Fishery Products;

*Fruit and Fruit Products: Fresh Cut Produce; Raw Agricultural Commodities; Other Fruit and Fruit Products;

*Fruit or Vegetable Juice, Pulp or Concentrate Products;

*Low Acid Canned Food (LACF) Products (see 21 C.F.R 113.3(n));

*Nuts and Edible Seed Product Categories: Nut and Nut Products; Edible Seed and Edible Seed Products;

*Shell Egg and Egg Product Categories: Chicken Egg and Egg Products; Other Egg and Egg Products;

*Vegetable and Vegetable Product Categories: Fresh Cut Products; Raw Agricultural Commodities; Other Vegetable and Vegetable Products; and

If none of the human food categories listed in the registration form apply, print the applicable food category or categories.

For Animal Consumption:

Grain or Grain Products (i.e., barley, grain sorghums, maize, oat, rice, rye, wheat, other grains or grain products)*;

Oilseed or Oilseed Products (i.e., cottonseed, soybeans, other oilseeds or oilseed products);

Alfalfa Products or Lespedeza Products;

Amino Acids or Related Products;

Animal-Derived Products;

Brewer Products;

Chemical Preservatives;

(Continued above)

Citrus Products;

Distillery Products;

Enzymes;

Fats or Oils;

Fermentation Products;

Marine Products;

Milk Products;

Minerals or Mineral Products;

Miscellaneous or Special Purpose Products;

Molasses or Molasses Products;

Non-protein Nitrogen Products;

Peanut Products;

Recycled Animal Waste Products;

Screenings;

Vitamins or Vitamin Products;

Yeast Products;

Mixed Feed (e.g., poultry, livestock, equine);

Pet Food;

*Pet Treats or Pet Chews;

*Pet Nutritional Supplements (e.g., vitamins, minerals); and

If none of the above food categories apply, print the applicable food category or categories (that does not or do not appear above).

Update Your Registration

To register, go to:
http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ucm324778.htm?source=go_vdelivery

Step 1: Find your PIN and password. If you cannot find them, file a new registration.

Step 2: Make sure the entity you designate as U.S. agent is willing and agreeable to serve.

Step 3: Classify all human and animal food products correctly using the expanded categories.

ICE Announces Arraignment of Import for False Import Documents to Avoid AD Duties

The Immigration and Customs Enforcement (ICE) announced a chief financial officer of a Georgia-based paper supply company was recently arraigned on charges of conspiracy to import paper products from China with fraudulent invoices and bills of lading, and to avoid customs duties on such products. As reported, three leading Chinese paper manufacturers, a Taiwanese company, and their respective CEOs were also charged with the conspiracy and 12 fraudulent importation counts.

United States Attorney Sally Quillian Yates reported, "Three large Chinese paper manufacturers are charged with conspiring with companies in Taiwan and Gwinnett County to avoid duties imposed by the Commerce Department to protect competition in the U.S. and global paper market. They are accused of avoiding over 20 million dollars in antidumping duties (ADD) by shipping stationery made in China through Taiwan, bribing Taiwanese customs officials, and exporting the goods from there into the United States, falsely relabeled 'Made in Taiwan.' Now the defendant companies and their leaders face conspiracy and fraudulent importation charges for their bribery and transshipment scheme."

After imposition of the AD duties, Apego, Fromus and the Watanabe Group launched a scheme to avoid the duties by transshipping large shipments of paper from China through Taiwan to office supply chains and other large retailers in the U.S., ICE alleged. The full extent of the conspiracy was discovered after Apego fired Gung's executive assistant, who then delivered a copy of the hard drive from her company laptop to the Department of Homeland Security. According to ICE, the amount of customs duties avoided has been estimated at over \$20 million.

The maximum penalty for the conspiracy charge is five years in prison, a \$1 million fine for a corporation, a \$250,000 fine for an individual, and three years of supervised release. The maximum penalty for the fraudulent importation charges is two years in prison, a \$1 million fine for a corporation, a \$250,000 fine for an individual, and one year of supervised release for each count.

ICE press release:

<http://www.ice.gov/news/releases/1210/121023atlanta.htm>

Court Rules that Finished Heat Sinks be Excluded from China Aluminum Extrusion AD/CVD Orders

The Court of International Trade (CIT) affirmed an International Trade Commission (ITC) negative injury determination for finished heat sinks in the antidumping and countervailing (AD/CV) duty investigations of aluminum extrusions from China (A-570-967). The ITC found injury to U.S. industry by imports of other types of aluminum extrusions. Therefore, the International Trade Administration (ITA) issued AD and CV duty orders.

These orders excluded finished heat sinks from the scope. As reported, CIT found no reason to overturn the ITC's decision to treat finished heat sinks as a different class of merchandise, and noted the ITC adequately supported its findings. CIT came to similar conclusions on the questions of injury and threat of injury, but also found that in many instances the plaintiffs didn't exhaust their administrative remedies in their arguments to ITC during the proceeding.

Aluminum Extrusions Fair Trade Committee v. United States, Slip Op. 12-129 (10/11/12) Judge

Barzilay: http://www.cit.uscourts.gov/SlipOpinions/Slip_op12/12-129.pdf

ICE Issues Report on Arrest of a Supervisory Office in L.A. for Accepting Bribes to Facilitate Smuggling

U.S. Customs and Border Protection (CBP) advised a CBP supervisory officer was recently arrested on charges of accepting bribes to allow others, including his ex-wife, to avoid duties on goods imported into the U.S. by falsely declaring the goods had been transported in-bond to another port of entry for export. The CBP officer was indicted by a federal grand jury at the U.S. District Court for the Central District of California on one count of conspiracy, one count of accepting bribes, and three counts of making false statements to the Department of Homeland Security (DHS) investigators.

According to the indictment, between 2004 and 2008 a supervisory officer was assigned to oversee the examination and release of cargo located at foreign-trade zones (FTZs). As reported, in May 2008, the Supervisor was assigned to oversee the bag searches at Los Angeles International Airport's Tom Bradley Terminal. The officer's ex-wife operated the Southern California 3rd Party Logistics and Industry FTZ, d/b/a Industry Free Trade Zone, in Los Angeles. As reported, under the CBP's instructions, the FTZ operator would import merchandise from China, and falsely declare that the goods had moved in-bond to a port of entry for export to Mexico in order to avoid paying duties.

According to the Justice Department (DOJ), the merchandise was actually delivered to warehouses in California for direct consumption into the U.S. commerce. The CBP officer would alter a CBP database to falsely show that the merchandise had been exported, even though he knew the shipments remained in the U.S. DOJ reported, the officer received payments from the FTZ totaling about \$100,000. In addition, the U.S. government lost over \$781,000 in unpaid duties and taxes. Also reported, this CBP officer was under investigation for a scheme to smuggle cocaine into the U.S. from Mexico.

Press release issued by U.S. Immigration and Customs Enforcement (ICE):
<http://www.ice.gov/news/releases/1210/121025los>

Export-Import Announces Co-Financing Agreements with Japan Bank for Exports from Japan and U.S.

Recently reported, officials from the Export-Import Bank of the U.S. and the Japan Bank for International Cooperation (JBIC) signed a co-financing agreement to facilitate export transactions involving companies in both the U.S. and Japan.

As reported by Ex-Im, the two nations' export credit agencies will provide a one-stop-shop financing package, creating administrative efficiencies for foreign buyers. The arrangement will pave the way for Ex-Im Bank and JBIC to co-finance projects, enabling exporters in both the U.S. and Japan to select the best mix of price and technology to strengthen their overseas bids and support jobs.

Ex-IM press release:

<http://www.exim.gov/newsandevents/releases/2012/Ex-Im-Bank-Japan-Bank-for-International-Cooperation-Sign-Co-financing-Agreement.cfm>

State Department To Hold Conference Call on Panama FTA December 11, 2012

The U.S. State Department announced a conference call on Taking Advantage of the New Free Trade Agreement With Panama for 12/11/12 @ 1 p.m. (EST). The State Department advised 87% of the duties currently charged on U.S. goods will be eliminated, making U.S. exporters even more competitive.

Conference registration at:

<http://export.gov/panama/doingbusinessinpanama/>

Press release:

<http://www.state.gov/e/eb/directline/events/199364.htm>

Export-Import Bank Signs Agreement for Credit Reinsurance to help Exporters

The Export-Import (the Ex-Im) Bank of the U.S. announced it reached an agreement with trade credit insurer Coface North America Insurance Co. to provide reinsurance. The bank introduced its reinsurance product two years ago to help U.S. small business exporters obtain short-term export credit. Under the agreement, Ex-Im Bank will provide reinsurance for export-credit insurance policies written by Coface North America Insurance to protect the accounts receivables and cash flow of American companies exporting goods and services overseas.

Ex-Im reported trade credit insurance from Coface, and reinsurance from Ex-Im Bank will enable American companies to increase the amount of credit they offer their overseas customers, who therefore can increase their purchases of American goods and services. In addition, the Ex-Im Bank renewed a 12-month export credit insurance policy for Wells Fargo to enable the export of American cotton to a large textile firm in Turkey, Menderes Tekstil Sanayi ve Ticaret A.S.

Details: <http://www.exim.gov/newsandevents/releases/2012/Ex-Im-Renews-Insurance-for-14-7-Million-Export-of-US-Cotton-to-Turkey-Supports-Farm-Jobs-in-Carolinas-Tennessee-and-Virginia.cfm>

Ex-Im Bank press release:
<http://www.exim.gov/newsandevents/releases/2012/Ex-Im-Bank-Will-Reinsure-Coface-North-Americas-Issue-of-Export-Credit-Insurance.cfm>

U.S. Council for International Business Expresses Concern to USTR over China's WTO Compliance

The U.S. Council for International Business (USCIB) announced in its 2012 statement to U.S. Trade Representative (USTR), it continues to have on-going concerns with China's compliance with its World Trade Organization commitments in certification, licensing, and testing requirements. USCIB members want more transparency and better efforts at consistency with regard to China's regulatory agencies as well as increased efforts at meeting their WTO obligations.

USCIB comments:

<http://www.uscib.org/index.asp?documentID=4397>

SPECIAL SECTION

U.S. Commercial Service - Resources for Going Global

(The U.S. Commercial Service - Your Global Business Partner)

With offices across the United States and in more than 75 countries, the U.S. Commercial Service of the U.S. Department of Commerce's International Trade Administration uses its global Network and international resources to connect U.S. companies with international buyers worldwide. If you have any questions about these initiatives, please contact your local U.S. Commercial Service trade specialist.

To find the trade specialist nearest you please visit
<http://www.buyusa.gov/home/us.html>.

Event: Ohio Aerospace Institute Trade Mission to France, Aeromart Toulouse 2012

Venue: Toulouse, France

Date: December 2-7, 2012

Learn more/register:

<http://www.bciaerospace.com/toulouse> or
email ANgoie@advbe.com

Registration Deadline: November 16,
2012

Discover International Sales Opportunities at Aeromart. The Ohio Aerospace Institute, International Trade Administration of the US Department of Commerce, the US Commercial Service, the Cleveland Foundation and the Ohio Development Services Agency invite Ohio aerospace companies to take part this trade mission. Aeromart has grown into a major aerospace and defense event offering outstanding networking opportunities to manufacturers, tier 1 suppliers, subcontractors, service providers and clusters from around the globe. Business matchmaking, trade office staff support (U.S. Commercial Service and State of Ohio) and site visits will be included for trade mission participants, depending on options they choose. For more information, please contact Monica Dumitriu, MBA, monicadumitriu@oai.org, telephone: 440-962-3141

Webinar Series: Aviation Sector
Opportunities in the Americas

Venue: Your Computer

Dates/Times: October 18,
2012(Archived) October 31, 2012/12:00
PM ET, November 14, 2012/12:00 PM ET

Cost: \$100 for the Entire Series/\$40 per
webinar

Learn more:

[http://export.gov/tradeamericas/tradeevents/w
ebinars/eq_ta_053850.asp#P36_3607](http://export.gov/tradeamericas/tradeevents/webinars/eq_ta_053850.asp#P36_3607)

Link to register:

[https://emenuapps.ita.doc.gov/ePublic/newWe
binarRegistration.jsp?SmartCode=3Q13](https://emenuapps.ita.doc.gov/ePublic/newWebinarRegistration.jsp?SmartCode=3Q13)

(Continued above)

Aviation is one of the most dynamic sectors of infrastructure growth in the Latin American and Caribbean region as countries strive to meet current and projected increased demand for air travel. To introduce U.S. firms to opportunities in these markets, aerospace experts from ITA's Commercial Service and Office of Transportation and Machinery along with the U.S. Trade and Development Agency have organized a Webinar Series about the Aviation Sector Opportunities in key markets in the Western Hemisphere Region to help increase the exports of U.S. airport and aircraft products and services to the region.

For more information contact

Melissa.Grosso@trade.gov.

Event: REACH - Implications for the Aerospace &
Defense Sectors

Venue: Your computer

Date/Time: November 29, 2012/10:30 AM -
12:00 PM ET

Learn more:

[http://export.gov/europe/showcaseeuropesectors/other
/teamotherevents/index.asp](http://export.gov/europe/showcaseeuropesectors/other/teamotherevents/index.asp)

Register:

[https://emenuapps.ita.doc.gov/ePublic/newWebinarReg
istration.jsp?SmartCode=3Q1B](https://emenuapps.ita.doc.gov/ePublic/newWebinarRegistration.jsp?SmartCode=3Q1B)

Under REACH, the continued marketing and Substances of Very High Concern (SVHCs) requires an authorization. Businesses active in the Aerospace and Defense Sectors use a number of substances that are being considered for SVHC classification. No alternatives exist for many of these substances. This live webinar will assist businesses active in the aerospace and defense sectors understand and manage the impact of REACH on their operations. This webinar will provide updates on recent EU developments including the status on substances being considered for SVHC classification, issues pertaining to requesting authorization and ensuring compliance, and explain potential strategies that businesses may use to utilize SVHCs or delay their classification. This Webinar will be presented by the U.S. Commercial Service U.S. Mission to the EU in collaboration with partners and scientists from the Keller and Heckman Law Firm.

Cost: \$75.

For more information, please contact

James.Lindley@trade.gov or telephone: 504-589-
6702.

South Asia/India

Webinar: South Asia Webinar Series

Venue: Your Computer

Date: October 31, 2012

Learn more/register:

<https://emenuapps.ita.doc.gov/ePublic/newWebinarRegistration.jsp?SmartCode=3Q0T>

Have you felt the lure of India, a market where U.S. exports more than doubled from 2005-2011? Or are you intrigued by the booming commercial opportunities in Sri Lanka, with GDP growth over 7%? If so, to explore how you can tap into export opportunities in these growing markets, participate in the South Asia webinar series to learn more about how to succeed and ask questions from the experts!

The "Doing Business in South India and Sri Lanka" webinar will feature government officials and successful U.S. companies who will share the best practices to succeed in these lucrative markets. The "Top Ten Financial, Legal and Customs Tips to Export to India" webinar on October 31 (3 pm EST) will give you with direct access to bankers, lawyers and freight forwarders to provide you with their "top ten" tips to export to India.

Cost: \$75 for the series.

For more information, please contact aileen.nandi@trade.gov telephone: 408-535-2757, ex. 102.

Event: 3C Trade Mission to India and Sri Lanka

Venue: Chennai, Cochin (India) and Colombo (Sri Lanka)

Date: February 3-8, 2013

Learn more/register:

http://export.gov/india/tradeevents/eg_in_052159.asp

(Continued above)

South India and Sri Lanka offer booming opportunities for U.S. companies in the architecture, infrastructure, hospitality, healthcare, environment and IT sectors. Join the Multi-Sector "3C" Trade Mission to Chennai, Cochin and Colombo to conduct one-on-one meetings with pre-screened potential business partners, participate in networking events and briefings and gain first-hand knowledge from site visits. Learn how to succeed in markets that are growing at 6.5% (India) and 7.2% (Sri Lanka) and make contacts to land business deals.

For more information or to apply for this trade mission, the first-ever U.S. Department of Commerce joint mission to India and Sri Lanka, please contact aileen.nandi@trade.gov

Event: 7th Annual Hot Market Watch Conference: Selling to India, Indonesia, Russia & South Korea

Venue: Cincinnati, OH

Date: April 4, 2013 (Networking Reception April 3)

Learn more/register:

<http://www.HotMarketWatch.com>

Cost: Early Bird Rate \$70 until December 14 (after Dec. 14th - \$90)

RFPs: Accepting presenter proposals until November 30, 2012

The "Hot Market Watch" Conference is an annual event organized by the U.S. Commercial Service in Cincinnati. This year's conference will focus on the "hot markets" of India, Indonesia, Russia & South Korea, and will provide market updates, tools, & resources for U.S. companies interested in selling to or expanding further into these countries & regions. There will also be an evening networking reception the night before (April 3) and is included with conference registration. Presenters will include our U.S. Department of Commerce Senior Commercial Officers from the U.S Commercial Service: David Gossack (Indonesia); Judy Reinke (India); John McCaslin (Russia); and Jim Sullivan (South Korea).

Senator Pushing CBP to Stop Flow of Counterfeit Auto Parts

In a recent letter to Department of Homeland Security (DHS) Secretary Janet Napolitano, U.S. Senator Carl Levin (D-MI) advised that U.S. Customs and Border Protection (CBP) must increase counterfeit interception efforts to help prevent the entrance of fake and faulty auto parts. "It is estimated that millions of counterfeit auto parts enter the United States every year with only a fraction being intercepted at the border," noted Levin. Recently the National Highway Traffic Safety Administration (NHTSA) advisory alerted consumers to the risk of counterfeit air bags.

NHTSA warned vehicle owners and repair professionals that counterfeit air bags are being sold as replacement parts and provided a list of nearly 100 vehicles for which counterfeit air bags may be available. NHTSA testing found the fake parts may, in many cases, fail to deploy and, in others, spew metal shrapnel during deployment. It should come as no surprise that NHTSA found that counterfeit airbags were made in China.

The counterfeit parts "pose a serious public safety concern and are costing "American jobs," according to Levin. He has requested a "detailed report of the specific actions the Department of Homeland Security is undertaking to protect the public from counterfeit air bags and other counterfeit auto parts."

Press release: <http://1.usa.gov/RNbAM9>



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