



EIB World Trade Headlines

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Newsletter Notes:

Canada Aligns Phthalate Ban in Toys and Childcare Articles with U.S. Policy

The Government of Canada recently issued regulations restricting six phthalates in vinyl parts of toys and certain childcare articles. The new regulations will take effect on or about 06/10/11. According to Canada's regulatory impact statement, the country has chosen to amend its regulations regarding phthalates in certain children's toys and products in order to align them with the U.S. and Europe. Under the new regulations, the vinyl in a toy or child care article will not be able to contain more than 1,000 mg/kg of di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) or benzyl butyl phthalate (BBP) in order to be imported, sold, or advertised in Canada

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FDA Issues Report on Creating Transparency with Importers - Seeks Comments

The Food and Drug Administration FDA issued a report, "FDA Transparency Initiative: Improving Transparency to Regulated Industry," in response to a request for input from regulated companies.

19 action items and five draft proposals to improve transparency to regulated industry have been outlined by FDA. Five action items focus on improving transparency to the importing community:

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

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FDA has requested comments on the draft proposal. According to the draft proposal, FDA would review existing procedures to evaluate importers, or third parties working on behalf of importers, who file information electronically about products offered for import. The FDA is also seeking improved communication regarding FDA general policies and procedures. FDA will issue a final version of the "Strategic Priorities FY 2011-2015" by March 2011. Comments are due by 03/08/11

FTZ Board Issues FR Notice Banning Certain AD/CVD Metals from FTZ Subzone Admission

The Foreign-Trade Zone Board (FTZB) issued an order granting Dow Corning Corporation's request to establish a subzone in Kentucky, but with a restriction that prohibits the admission of silicon metal subject to an antidumping (AD) or countervailing (CV) duty order into the subzone. The order follows the staff's preliminary June 2010 recommendation that the application be approved but with a restriction prohibiting silicon metal subject to an AD or CV duty order, because full approval could negatively impact domestic silicon metal production. According to a statement by the National Association of Foreign-Trade Zones (NAFTZ), the FTZB has made a similar decision in REC Silicon's application for subzone status, for which the FTZ staff issued a nearly identical preliminary recommendation in June. The NAFTZ expressed disappointment with these decisions, noting that international competitors have access to silicon metal at much lower prices, and these applications were well within past precedent for FTZ use. The group is also concerned that restricting the use of this export benefit in the Dow Corning and REC Silicon cases may have the unintended consequence of discouraging other companies from filing applications for FTZ exports.

FTZB notice FR Pub 01/06/11:

<http://edocket.access.gpo.gov/2011/pdf/2011-66.pdf>

SEC Posts Testimony on Whistleblowing Proposal Under FCPA

The Securities and Exchange Commission's (SECs) posted comments received on the November 2010 proposed rule on "Securities Whistleblower Incentives and Protection" to implement Section 21F of the Securities Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010. Comments regarding the Foreign Corrupt Practices Act (FCPA) related aspects of the proposed rule include:

- proposed rule would pay awards to Whistleblowers who provide original information to SEC;
- Whistleblower could tell firm & wait 90 days to notify SEC, & still be eligible for award;
- Trade feels telling firms first should be required, not optional;
- internal FCPA company investigations take time, 90 days insufficient; and
- concerns that possibility of award could lead to more complaints of lower quality.

SEC testimony: <http://www.sec.gov/comments/s7-33-10/s73310.shtml>

FDA Creates General Navigation Guide to Determine If a Product is Regulated by FDA

The Food and Drug Administration (FDA) issued a General Navigation Guide for Manufacturers of FDA-Regulated Products and Start-ups, to help them determine who to contact to determine if their products or planned activities are regulated by FDA.

Overview of products regulated by FDA:

<http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194879.htm>

FDA Basics for Industry webpage:

<http://www.fda.gov/ForIndustry/FDABasicsforIndustry/ucm2024416.htm>

FDA notice:

<http://www.fda.gov/downloads/ForIndustry/FDABasicsforIndustry/UCM239011.pdf>

BIS Issues Final Rule Amending EAR to Remove Certain Publicly Available Encryption Software from Jurisdiction

Effective 01/07/11, the Bureau of Industry and Security (BIS) issued a final rule which removes certain publicly available mass market encryption software and certain other specified publicly available encryption software in object code from the jurisdiction of the Export Administration Regulations (EAR). BIS also comments on the issue of public availability, "knowledge", and "red flags." According to BIS, this final rule will result in the simplification of the regulatory provisions for publicly available mass market software and publicly available specified encryption software in object code, and will have no effect on export control policy. BIS adds that this final rule does not result in the decontrol of source code classified under Export Control Classification Number (ECCN) 5D002. BIS is removing from the jurisdiction of the EAR publicly available encryption software in object code with a symmetric key length greater than 64-bits that has been determined to be mass market software either by BIS review or exporter self-classification and has been reclassified from ECCN 5D002 to ECCN 5D992.3. BIS notes that software authorized for export and reexport under 15 CFR 742.15(b)(1) pursuant to encryption registration and self-classification must still be included in the exporter's annual self-classification report for the calendar year during which it was self-classified as "mass market" software.

BIS is also removing from the jurisdiction of the EAR publicly available encryption software in object code classified under ECCN 5D002, when the corresponding source code meets the criteria specified under License Exception TSU4.

BIS contact (general) - Sharron Cook (202) 482-2440

BIS contact (technical) - Information Technology Division (202) 482-0707

BIS notice: FR Pub 01/07/11

<http://edocket.access.gpo.gov/2011/pdf/2010-32803.pdf>

EPA Issues Final Rule Requiring Testing and Reporting of Certain HPV Chemicals - Affects Importers and Exporters

The Environmental Protection Agency (EPA) issued a final rule under the Toxic Substances Control Act (TSCA), effective 02/07/11, to require manufacturers and processors of 19 high production volume (HPV) chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. According to EPA, HPV chemicals are those with a production/import volume equal to or greater than 1 million pounds (lbs) per year. In its July 2008 proposed rule, EPA preliminarily determined that there was insufficient data to reasonably determine or predict the effects on health or the environment of the 19 chemical substances' manufacture, distribution in commerce, processing, use, or disposal (or combination of these activities). Therefore, EPA proposed certain testing requirements to provide it with sufficient data to evaluate these effects and to take appropriate follow-up action. Manufacturers (defined by statute to include importers) and processors, or those who intend to manufacture or process any of the 19 chemical substances at any time from the effective date of the final rule to the end of the test data reimbursement period would be required to:

1. submit to EPA a letter of intent to test, or apply to and obtain from EPA an exemption from testing;
2. conduct the tests specified in the final rule; and
3. submit the test data to EPA.

EPA has previously stated that while importers would be subject to the final rule and its penalties for non-compliance, as a practical matter, such EPA-required testing is generally conducted by large manufacturers and/or associations of the covered chemical substances.

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Persons subject to the testing requirements will be divided into two groups: Tier 1 - persons initially required to comply or Tier 2 - persons not initially required to comply. Tier 2 is those who manufacture one of the chemical substances solely as a byproduct, as a naturally occurring substance, etc. Tier 2 persons will only be required to comply if directed by the EPA to do so under certain circumstances. In consideration of comments received on the July 2008 proposed rule, EPA notes that it has changed some testing requirements for certain HPV chemicals; however, none of these changes resulted in dropping all testing proposed for any of the chemical substances, and EPA is still requiring testing for each of the 19 HPV chemicals originally proposed for testing in 2008. EPA's final rule will require the 19 chemical substances to be tested for things such as physical/chemical properties and biodegradation, environmental fate and pathways, aquatic toxicity, acute mammalian toxicity, mammalian genotoxicity, and mammalian repeated dose, reproduction, and development toxicity. Further information and listing of the chemical substances included in this final rule are listed in 40 CFR 799.5087(j) and this notice. EPA Contacts- Paul Campanella (202) 564-8091 or John Schaeffer (202) 564-8173
EPA press release:
<http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/b4a91485f80b15c48525780e0056ed2b!OpenDocument>
EPA notice FR Pub 01/07/11:
<http://edocket.access.gpo.gov/2011/pdf/2010-33313.pdf>

ATF Issues Notice That Affects Certain Firearms Importers

Recently the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) announced a ruling that will affect any person licensed as a dealer-gunsmith performing certain processing or finishing on firearms owned and marked by a federally licensed firearms manufacturer. The ruling will also affect licensed manufacturers and licensed importers who have contracts with specialized gunsmiths to perform a variety of processes involved in producing firearms. ATF ruling:
<http://www.atf.gov/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-10.htm>

United States Working with WCO to Curb Dangerous Chemical Traffic

Homeland Security Secretary Janet Napolitano, recently commented that the U.S. will work through the World Customs Organization (WCO) to strengthen international security standards to prevent traffic in chemicals that can be used by terrorists to make bombs. The U.S. is committed to working with other nations to strengthen global supply chain defenses against terrorists and to build more resilience into the system to assure quick recovery from attacks. Kunio Mikuriya, the WCO's director general, reported that the WCO will work to build international consensus on security standards and help countries deploy the latest detection technology. DHS has established a center to focus on exports of precursors that are in general use in the U.S.

Commerce Posts Speech on 5 Steps for China to Help Improve Relationship

During remarks at the January meeting of the U.S.-China Business Council, Commerce Secretary Locke discussed ways to reach the full potential of the U.S.-China commercial relationship. Locke discussed China's significant economic progress over the past 20 years, yet he notes that the policies and practices that have shaped U.S.-China relations over the past few decades will not suffice over the new few decades. Locke cautions that the gross trade imbalances between the U.S. and China have the potential to threaten global stability and prosperity and that the U.S. and China need a more equitable commercial relationship. Secretary Locke notes that U.S. business leaders continue to express significant concerns about the commercial environment in China. They cite China's lax intellectual property protection and enforcement, lack of transparency in government decision-making, and numerous indigenous innovation policies that often preclude foreign companies from vying for Chinese government contracts. These policies mandate that products must be made, conceived and designed in China.

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According to Locke, China has benefited tremendously from the international trading system, especially since it joined the World Trade Organization in 2001. The U.S. and other foreign nations have every right to seek more meaningful commitment and progress from China in implementing the market-opening policies it agreed to when it joined the WTO.

Locke noted five things that will need to happen in order to turn China's promises to open its markets into reality:

1. a statement of principle from Chinese officials that action will be taken to solve a market access issue;
2. codification of the agreement into binding law or regulations;
3. faithful implementation of the law or regulation by the central government;
4. implementation of the law or regulation at the local and provincial levels; and
5. the new law or regulation needs to become a norm – an accepted way of doing business in China's commercial culture.

Locke reminded that during the December 2010 Joint Commission on Commerce and Trade (JCCT) meetings, China agreed to remove administrative and regulatory barriers discriminating against U.S. companies selling everything from industrial machinery and telecom devices to those that restrict U.S. participation in the development of large-scale wind farms in China. China also agreed to revise one of their major government procurement catalogues to ensure a level playing field for foreign suppliers and to reduce the use of counterfeit software in government offices and state-owned enterprises. However, Locke noted China's failure to implement agreements reached at previous JCCT meetings and cautioned that such agreements are only the first step and must be turned into concrete action with results.

Commerce Secretary Locke Speech:

<http://www.commerce.gov/news/secretary-speeches/2011/01/13/remarks-us-china-business-council-luncheon>

DDTC Publishes Two Notices in The Federal Register - Seeking Public Comment - Comments on Both Notices are Due to DDTC by February 8, 2011.

Rules effect pending changes to ITAR CAT VII and new structure to be designed similar to CCL. For webinar on this topic contact: Jeanette Reed jeanette@eib.com

AES Broadcast 01/19/2011
Broadcast # 2011006

2011 Schedule B and HTS Numbers - Effective Immediately

Effective immediately, the Schedule B and Harmonized Tariff Schedule (HTS) tables in the AES have been updated to accept the changes to the 2011 codes.

AES will accept shipments with outdated 2010 codes during a grace period for 30 days beyond the expiration date of December 31, 2010. Reporting an outdated 2010 code after the 30 day grace period will result in a fatal error.

The AESDirect program has been updated with the 2011 codes and will accept shipments with outdated 2010 codes during the grace period as well.

All AESPcLink users must update their AESDirect code tables to reflect the 2011 changes in Schedule B and HTS. Web users of AESDirect who file via the website at www.aesdirect.gov will have their code tables updated via the program automatically.

The 2011 Schedule B and HTS tables are available for downloading at <http://www.census.gov/foreign-trade/aes/documentlibrary/index.html#concordance>

The current list of HTS codes that are not valid for AES are available at: <http://www.census.gov/foreign-trade/aes/documentlibrary/hts-not-for-aes.html>

For further information or questions regarding changes in Schedule B and HTS, contact the U.S. Census Bureau's Commodity Analysis Branch (CAB).

Telephone: (800) 549-0595, select option 2 for CAB
Email: ftd.scheduleb@census.gov
Online: www.census.gov/trade.
Blog: blogs.census.gov/globalreach

China To Do More Export Quality Control

Wang Xin, a director in the General Administration of Quality Supervision, Inspection and Quarantine, recently announced that China has confirmed its international commitment to guarantee the quality of its bulk exports. According to Xin, the country was committed to a range of actions, including enhancing cooperation with the international community. Press release:

<http://english.mofcom.gov.cn/aarticle/counselorsreport/westernasiaandafricareport/201012/20101207342601.html>

DHS Secretary Napolitano Signs Security Initiatives Intent with Qatar and Visits Israel to Discuss Supply Chain Security

Secretary of Homeland Security Napolitano recently met with the Israeli President and officials to discuss threats from terrorism and the ongoing security partnership between the U.S. and Israel. Discussions included the countries' continued collaboration on global supply chain security, enhanced international aviation security, emergency management, science and technology, and intelligence analysis and sharing.

DHS press release:

http://www.dhs.gov/ynews/releases/pr_1294164028558.shtm

DHS notice:

http://www.dhs.gov/ynews/releases/pr_1294089703618.shtm

In addition, on 01/02/11, Secretary of Homeland Security Napolitano and the Qatari Minister of State for Interior Affairs signed a letter of intent to expand the two countries' collaboration on bilateral initiatives to enhance security, including new partnerships to enhance international aviation security, cybersecurity, and the protection of critical infrastructure and key resources.

DHS notice:

http://www.dhs.gov/ynews/releases/pr_1294090212152.shtm

White House Posts Report on 2010 IPR Enforcement Activities

The White House's Office of U.S. Intellectual Property Enforcement Coordinator (IPEC) has released a document of selected highlights of intellectual property (IP) enforcement achievements in 2010. The efforts include:

- actions to secure the U.S. supply chain,
- address counterfeit pharmaceuticals,
- enforce intellectual property rights (IPR) internationally, and
- to coordinate with state and local law enforcement.

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As reported, U.S. Customs and Border Protection's (CBPs) IPR Center initiated two cross-border enforcement actions through the World Customs Organization (WCO) and INTERPOL, Operation Pangea III which targets counterfeit pharmaceuticals sold over the Internet, and Operation Global Hoax which targets counterfeit goods shipped through international mail and courier facilities. The U.S. Trade Representative (USTR) concluded final Anti-Counterfeiting Trade Agreement (ACTA) negotiations and text in November and December 2010 to fight global counterfeiting and piracy. As part of IPR enforcement in China, Attorney General Holder and IPEC met with Chinese officials and an IP Enforcement Working Group meeting of Chinese officials was held. In Russia, a new customs laws giving ex officio authority to customs officials was passed as part of the 2006 U.S.-Russia Bilateral Agreement on IPR. Additionally, USTR initiated a special review of the status of IP protection and enforcement in the Philippines and Thailand under the "Special 301" process.

The Department of Justice (DOJ), CBP, and Immigration & Customs Enforcement Homeland Security Investigations (ICE HSI) combined efforts to combat counterfeit computer network hardware from China in Operation Network Raider. Additionally, IPEC highlights several cases in which U.S. agencies combated intellectual property crimes, including the trafficking and selling of counterfeit integrated circuits for use by the U.S. military, electronic power strips containing counterfeit Underwriter Laboratories (UL) trademarks, and counterfeit exercise equipment. White House notice:

http://www.whitehouse.gov/sites/default/files/omb/IPEC/spotlight/IPEC_Spotlight_December2010.pdf



United States Chamber of Commerce Calls for FTAs to Double President's Export Goal

U.S. Chamber of Commerce President Thomas J. Donohue called for the abolition of all tariffs on goods moving between the U.S. and the European Union as a principal effort in stimulating trade. Along with trade, Donohue noted the U.S. should focus new attention on the global supply chain.

In his annual State of American Business address, Donohue pledged to raise the stakes on the U.S. export initiative. The Obama administration calls for doubling exports in five years, but the chamber's effort aims to double them again in the next five. The chamber's trade agenda includes:

1. the completion of free trade agreements (FTA) with South Korea , Panama and Colombia ,
2. protection of intellectual property rights (IPR),
3. modernizing export controls,
4. fair treatment in China ,
5. promotion of tourism, and
6. an end to the standoff between Mexico and the U.S. over cross-border trucking.

In addition, Donohue called for a supply chain that seamlessly connects the U.S. economy with the world by way of better transportation, high-speed communications, and modern seaports, airports and border crossings. According to Donohue, "the single all-encompassing opportunity for us to drive national productivity is to significantly improve our global supply chain."

Donohue will soon travel to Europe to promote the zero-tariff plan. State of American Business address: <http://www.uschamber.com/sab>
www.joc.com (1/11/11)



CPSC Announces Web Conferences to Demo Public Safety Incident Database

The Consumer Product Safety Commission (CPSC) will host two Web conferences to demonstrate to interested stakeholders various functions of the publicly available consumer product safety information database that CPSC is scheduled to launch in March 2011. In December 2010, CPSC announced they would establish a database of consumer product safety incidents, as required by the Consumer Product Safety Improvement Act of 2008 (CPSIA). The public may submit reports of harm about consumer product safety incidents and manufacturers identified in the report may comment. Both will appear in a publicly available and searchable database on CPSC's website. The first Web conference, which will be held on 01/11/11, will focus on the incident form that the public will use to file a report of harm and the search function of the Database.

The second Web conference, which will be held on 01/20/11, will focus on the industry registration and comment features, the process for reporting incidents, and the public search component of the database.

Stakeholders may participate in person or online. Persons interested in viewing or attending either of the Web conferences should register in advance. See notice for further registration information.

Registration information:

<http://www.cpsc.gov/meetingsignup.html>

CPSC notice: FR Pub 01/07/11

<http://edocket.access.gpo.gov/2011/pdf/2011-120.pdf>

Census Posts List of HTS Numbers That Cannot Be Used for AES

The Census Bureau recently posted its list of Harmonized Tariff Schedule (HTS) numbers that are invalid for use in the Automated Export System (AES) as of 01/01/11. Census advises that the list of HTS numbers that are invalid reflects the addition of 49 HTS numbers. Census' list of 231 HTS numbers:

<http://www.census.gov/foreign-trade/aes/documentlibrary/hts-not-for-aes.html>

Thailand's Rule on Hazmat Insurance May Cause Carriers to Refuse Shipments

Some ocean carriers are suspending delivery of hazardous materials (hazmats) at Thailand ports because of a new Thai regulation requiring advance payment of insurance. As reported, the regulation implemented by Thailand's Maritime Department effective 02/11/11 requires all carriers transporting dangerous goods to and from Thailand to provide insurance to cover any third parties who may be affected by loading and discharging of dangerous goods. Orient Overseas Container Line (OOCL) recently notified shippers it has temporarily suspended booking of any dangerous goods shipments going through Thailand ports on and after this effective date. U.S. chemical exporters fear the required insurance, which carriers would pass along, would make it too expensive to continue shipping hazmats directly to Thailand by ocean. U.S. chemical exporters are exploring other ways of shipping hazmats to Thai customers. This could send some to overland transport through neighboring Malaysia until Thailand's Maritime Department modifies the regulation.

Census Announces Upcoming Profiles on U.S. Importing and Exporting

The Census Bureau recently announced that with the release of February 2011 statistics it will introduce a Profile of U.S. Importing Companies, which will provide values and counts based on company characteristics and will include additional information on state of destination, country of origin, and number of trading partner countries. The existing profile of U.S. exporting companies will be combined with the new import company profile information to create a new annual release called "A Profile of U.S. Importing and Exporting Companies." This initial combined Profile will cover data years 2008 – 2009 and will be released on 04/12/11. Samples of the new exhibits: <http://www.census.gov/foreign-trade/statistics/notices/2009profiles/sample.html>
Census notice: http://www.census.gov/foreign-trade/statistics/notices/20110113_profiles.html

FMC Announces Increased Oversight on Three Global Vessel Alliances

The Federal Maritime Commission (FMC) has ordered three global vessel alliances to provide more timely reports on changes in vessel capacity in the U.S. trades. The Grand Alliance, New World Alliance and CKYH Alliance will report changes in overall capacity monthly, rather than quarterly.

According to the FMC, the order takes effect 01/24/11. It was issued after a shortage of vessel capacity a year ago led to a nine-month investigation of the causes. The commission found that quarterly capacity reports were not sufficient to allow FMC monitoring. By the time the FMC receives the data, they could be more than five months out of date. The new order requires that the alliances file minutes of meetings of "the senior-most committee that approves capacity and schedule planning recommendations" in addition to the monthly capacity reports.

Alliances also will be required to provide advance notice of planned increase or decrease in capacity. Carriers also will file notice of vessel substitutions or changes in sailing schedules that cause a change of 5 percent or more in capacity in a certain trade lane. www.joc.com (01/12/11)

China Announces Crackdown on Forged C/Os

China's General Administration of Quality, Supervision, Inspection and Quarantine (AQSIQ) issued a notice urging quality inspection agencies at all levels to carry out a nation-wide cracking down on falsified or forged certificates of origin and strengthening management on the mark of origin of export goods. The entry-exit inspection and quarantine bureaus directly under AQSIQ are directed to tighten their oversight of blank certificates of origin, carry out spot checks to prevent fraudulent use of others' certificates, carry out full investigations, and implement severe penalties.

AQSIQ notice: http://english.aqsic.gov.cn/NewsRelease/NewsUpdates/201101/t20110107_174891.htm

TSA Proposing 100% Screening of Inbound Cargo by End of Year

As reported, the Transportation Security Administration (TSA) proposed updated air carrier standard security programs to passenger airlines that would require the air cargo industry to screen 100 percent of the cargo that is uplifted on passenger aircraft bound for the United States by 12/31/11. The Implementing Recommendations of the 9/11 Act of 2007 (9/11 Act) required the TSA to develop a system to screen 100 percent of all cargo transported on passenger aircraft to provide a level of security commensurate with the level of security for passenger checked baggage no later than 08/03/10. TSA advised, with the help of airlines, and through the Certified Cargo Screening Program (CCSP), TSA successfully completed the mission for cargo loaded on passenger aircraft inside the United States. Assistant Administrator John Sammon testified before Congress in June 2010 that cargo moving into the U.S. would be screened at 100 percent no later than 2013. However, recent global events demonstrated a compelling need to attain the 100 percent goal sooner rather than later. Carriers will have 30-45 days to comment on the new 100 percent screening requirement, and TSA will review and evaluate the industry comments prior to finalizing and making the requirement effective. TSA notes, as air carriers increase their screening percentages, they may require operational changes for shipments tendered at non-U.S. locations. TSA recommends that shippers communicate with their supply chain partners as soon as possible to understand the potential impact that 100 percent screening of inbound air cargo may have on their supply chain.

USTR Posts Speech to CES Covering ACTA, APEC, and TPP

U.S. Trade Representative (USTR) Kirk spoke at the Consumer Electronics Show (CES) to discuss USTR efforts to ensure the flexibility of U.S. trade policies to accommodate innovation, safeguard intellectual property, facilitate global reach, and lead to the creation of more technology-sector jobs in the U.S. Rep. Kirk commented on:

- USTR exploring ways to build on WTO Information Technology Agreement (ITA);
- USTR using the Asia-Pacific Economic Cooperation Forum (APEC) to expand on agreements to reduce barriers to trade such as the ITA and Anti-Counterfeiting Trade Agreement (ACTA);
- USTR is focused on improving and simplifying customs and logistics procedures to reduce the time, cost, and uncertainty of moving goods and services through the region, etc.

The U.S. will host the 2011 APEC and plans to achieve practical results that will impact companies' ability to do business in the Asia-Pacific region. Rep. Kirk noted that the U.S. recently finalized the ACTA, which will be a new tool to fight global counterfeiting and piracy. Kirk added that the Trans-Pacific Partnership (TPP) agreement that is being negotiated could be another vehicle for bringing ideas on key trade and investment policy challenges. USTR press release <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2011/january/remarks-ambassador-ron-kirk-consumer-electro>



USTR Posts Information on NAFTA Commission Meeting

U.S., Mexican, and Canadian officials met in Mexico City on 01/11/11, for the North American Free Trade Agreement (NAFTA) Free Trade Commission meeting where they discussed changes in rules of origin, telecommunication product testing, and helping small and medium sized enterprises (SME) take advantage of export opportunities. The Commission reported that because all tariff cuts under NAFTA have been implemented on time or ahead of schedule, it is developing new ways to increase trade, including measures to reduce transaction costs, facilitate access to information, and eliminate barriers to trade. As reported, the Working Group on Rules of Origin (WGRO) has reached preliminary agreement on a fourth set of changes to the NAFTA rules of origin. The WGRO will work to align the NAFTA rules of origin with the updated tariff schedules that will result from future amendments to the nomenclature of the Harmonized System (HS). The WGRO will also explore implementing a fifth set of changes to the NAFTA rules of origin. The Commission notes that goods that have a positive impact on the environment are part of the set of changes to the NAFTA rules of origin. An ad hoc working group of senior trade officials will work to identify areas for collaboration with the North American Commission for Environmental Cooperation (NACEC).

The Commission also discussed ways to help SMEs take advantage of the export opportunities provided by NAFTA. To address SMEs challenges in accessing information, the Commission has released a publication, "Opportunities for Small and Medium-Sized Enterprises in North America", to answer fundamental questions about starting to export. This document will be available on each country's websites. In addition, a new source of assistance and interactive information exchange for SMEs is a website for "connecting small business to the world." <http://sbdcglobal.com/>.

(Continued above)

In conclusion, the countries' reaffirmed their commitment to enter into bilateral mutual recognition agreements (MRAs) that establish procedures for accepting test results from laboratories or testing facilities in the territory of another NAFTA country for use in the conformity assessment of telecommunications equipment. This will allow a manufacturer to test a product only once and then have the test results accepted in other NAFTA countries. USTR notice:

<http://www.ustr.gov/about-us/press-office/press-releases/2011/january/joint-statement-january-10-2011-meeting-nafta-free>

USTR to Begin Negotiating with Mexico to Resolve Trucking Dispute

U.S. Trade Representative Ron Kirk announced that a new U.S.-Mexico cross-border trucking program could be in place within four to six months. As reported, negotiations could begin as early as next week. The Department of Transportation (DOT) released an "initial concept document" with the bare outlines of a program as a starting point for discussions and also posted it on their website. The program would replace a Bush-era pilot project that was killed by Congress in March 2009, drawing \$2.4 billion in retaliatory tariffs from Mexico. Mexican officials welcomed the initiative to resolve a dispute that stretches back to the implementation of the North American Free Trade Agreement in 199 and has recently suspended procedures that regularly add and remove products from a list of U.S. goods hit with punishing retaliatory tariffs. Ricardo Alday, spokesman for the Mexican Embassy in the U.S., commented; "we will carefully evaluate (the concept document) to move forward with the administration." The Teamsters union, independent truckers and consumer advocates oppose giving Mexican carriers the same rights enjoyed by Canadian truckers in the U.S.

The DOT "initial concept document"
<http://www.joc.com/government-regulation/dot-releases-concept-document-us-mexican-trucking>

The DOT plan:

<http://www.fmcsa.dot.gov/documents/cross-border/Concept-Trucks-English.pdf>

Wall Street Journal article with quote by USTR Kirk:
<http://tinyurl.com/4nztls5>

Teamsters quote: <http://www.joc.com/government-regulation/hoffa-attacks-dot-cross-border-trucking-proposal>
JOC article (1/12/11): <http://www.joc.com/trucking/mexican-trucking-proposal-stirs-strong-reactions>

Presidential Memoranda - Regulatory Compliance

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Regulatory Compliance

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government's activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at ogesdw.dol.gov and www.epa-echo.gov), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

(Continued above)

First, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable, and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

Second, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

Third, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies' risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of OMB is authorized and directed to publish this memorandum in *the Federal Register*.

CPSC Posts Speeches on Problems at Ports, Toy Cadmium Level, Small Parts Regulations

The Consumer Product Safety Commission (CPSC) posted recent speeches delivered by Chairman Tenenbaum during her trip to Hong Kong. The Chairman reported that 2010 was a record year at CPSC for samples collected at ports and samples found to be violative, which is more than 55% of the products that it sampled were violative or dangerous to consumers. She noted this was no accident as the agency is committing more resources and more sophisticated technology to its import surveillance effort. She emphasized that CPSC is "getting better at catching the bad imports, so that the good ones can flow through the system faster." The Chairman discussed that the Consumer Product Safety Improvement Act of 2008 (CPSIA) third-party testing and certification requirements have helped contribute to the noticeable reduction in lead paint-related recalls.

She also stated that CPSC staff has been working hard to recognize accredited labs that can test for many other CPSC requirements. In order to stay ahead of potential issues with cadmium, instead of reacting as it did with lead, CPSC is now focusing on the standards for cadmium. Because the CPSIA made the ASTM F963 toy standard mandatory, there is now a limit on cadmium's use as a surface coatings on toys. CPSC reports that their scientists are:

- assessing whether the surface coating limit of 75 parts per million of cadmium in toys is adequate;
- are working with the ASTM voluntary standards group for toys to establish a new extraction limit for cadmium in the substrate of toys; and
- are assessing whether cadmium limits should be set for other products.

Tenenbaum noted that other heavy metals such as antimony, arsenic, barium, mercury, chromium, and selenium are in CPSC's sights as these are bad metals for children and there is no good reason to use them or allow them to be introduced into the manufacture of toys or other children's products. She called upon all manufacturers, importer, exporters, and retailers of children's products to take the necessary steps to ensure that final products do not contain these metals.

(Continued above)

Just as with cadmium, the CPSIA set requirements limiting the use of antimony, arsenic, barium, mercury, and chromium in surface coatings on toys, because the CPSIA made the ASTM F963 toy standard mandatory.

Chairman Tenenbaum made it clear that she intends to explore ways for the U.S. to go beyond the ASTM surface coating requirements for these metals.

Chairman Tenenbaum also reported that there are child safety organizations in the U.S. who no longer believe the U.S.' 30 year old small parts regulations are adequate, as there have been recent incidents of children choking to death or nearly choking on parts of toys that were slightly longer than the current requirement. According to Tenenbaum, if the agency decides a fresh look at this issue is needed, she will not hesitate to ask CPSC's cadre of experts in child behavior and physiology to provide a recommendation. Finally, Tenenbaum noted that CPSIA mandates that the total lead content limit in children's products drop to 100 parts per million in August 2011, except where the Commission finds that a 100 ppm limit is not technologically feasible. CPSC has already solicited and will continue to solicit comments and insights from key stakeholders, on the issue of technological feasibility "prior to making its final decision."

The Chairman announced that during her trip, she signed a new memorandum of understanding (MOU) with Hong Kong Commissioner Yuen of the Customs and Excise Department. Under the MOU, CPSC and the government of Hong Kong have pledged to share vital safety information, exchange technical resources, and work together on training. She believes this MOU is important because the more violative products that can be screened and stopped before being exported, the greater the level of safety provided to the marketplace. CPSC reported there is a small shift occurring, a shift that is leading certain manufacturing sectors to transfer some of their factories to countries like Vietnam and Bangladesh. The agency is ready to partner with these countries so that the import problems it has already experienced do not materialize again.

Chairman Tenenbaum speech (01/12/11)

<http://www.cpsc.gov/PR/tenenbaum01122011.html>
and

<http://www.cpsc.gov/PR/tenenbaum01122011a.html>

FDA Posts Updated FAQ on Lead in Juice Products

The Food and Drug Administration (FDA) recently updated its November 2010 FAQ on "Low Levels of Lead in Some Juice Products", noting that it tests food products such as fruit juice and canned fruit products for lead on a regular basis as part of its surveillance activities to monitor the safety of the U.S. food supply. In July 2010, FDA completed its most recent check of amounts of lead in some commercial juice and food products that contain fruit, finding that none of the products contained lead in an amount that would pose an unacceptable risk to health. FDA reported they tested samples of apple juice, grape juice, peach slices, pears, mixed fruit, and fruit cocktail.

FDA notice:

<http://www.fda.gov/Food/FoodSafety/ProductSpecificInformation/FruitsVegetablesJuices/ucm233520.htm>

FDA Creates Web Site for Industry to Interact With FDA - FDA Basics for Industry

The Food and Drug Administration (FDA) launched a new website called FDA Basics for Industry to help companies and others save time and resources in their interactions with the agency. According to FDA, the new website includes basic information about the regulatory process, including information that is frequently requested by industry. FDA website:

www.fda.gov/FDABasicsforIndustry

FDA notice:

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm239086.htm>



ITA Announces More Public Forums on Proposed Revisions to FTZ Regulations

The International Trade Administration (ITA) issued an update announcing an additional confirmed forum regarding the Foreign-Trade Zones Board's (FTZB's) recently new proposed major revisions to the FTZ regulations. The ITA previously announced forums to be held on:

- 1/26/11 in Seattle WA,
- 1/28/11 in San Francisco CA, and
- 02/07/11 and 02/09/11 in Washington, DC.

The ITA has now confirmed that another forum will take place on 02/23/11 in Detroit MI.

The ITA also announces tentative dates of 02/16/11 in New York City, 02/28/11 in Houston, 03/02/11 in Atlanta, and 03/04/11 in Miami.

The FTZB issued a proposed rule, on 12/30/10, to comprehensively revise and update the FTZ regulations in 15 CFR Part 400. Key revisions in the proposed rule pertain to activities in zones in which an imported component is combined with one or more other components to create a different finished product, as well as expedited access to FTZ benefits for U.S. manufacturers for export-oriented activity.

Comments on the proposed rule are due by 04/08/11.

ITA notice:

<http://ia.ita.doc.gov/ftzpage/letters/freeforums>.

Treasury Posts Secretary Geithner's Speech on China IPR and Currency

The Treasury Department recently posted Secretary Geithner's remarks, "The Path Ahead for the U.S.-China Economic Relationship," in which he reviews concerns in the U.S. economic relationship with China and the extent of progress made to date. Geithner commented on the Chinese government's domination of the financial system, the widespread theft of intellectual property, and the continued undervaluation of currency. Geithner noted that China has been gradually moving to address U.S. concerns and the U.S.' ability to allow China more access to U.S. high technology products, investment opportunities, and market economy access will depend on China's progress.

Secretary Geithner's speech:

<http://www.treasury.gov/press-center/press->