



# *EIB World Trade Headlines*

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January 2012 - Vol 4, Issue 2

## **Commerce's BEA Keeps its Finger on the Economy's Pulse**

BEA's Four Big Numbers to highlight in 2011 are:

**\*\$15,180,900,000,000** (That's \$15 trillion). That's the total size of the U.S. economy as of the 3rd quarter of 2011 on an annualized basis.

**\*\$1,977,400,000,000** (That's \$1.9 trillion). That's the value of corporate profits as of the 3rd quarter of 2011. Profits of corporations in the United States climbed to the highest level on record stretching back to 1947.

**\*2.3 percent.** That's the real growth rate of consumer spending in the 3rd quarter of 2011. Consumer spending, the goods and services which we all buy on a daily basis, accounts for roughly 70 percent of all economic activity in the United States. The growth rate is the fastest seen so far this year. Consumer spending on services—like haircuts, sports tickets and going out to bars and restaurants—grew by nearly 3 percent, the strongest pace since 2006.

**\*15.6 percent** growth in business investment in equipment and software. This rate of investment is at its strongest pace in a year, and this is crucial as these investments are critical in supporting economic recovery and driving growth.

## **NEWSLETTER NOTES**

\*Commerce's BEA Keeps its Finger on the Economy's Pulse

\*CBP Issues Message on New FDA A of C Codes for Medical Device Kits

\*State Department and BIS Issue Proposed Rule to Revise USML Cat VI and CCL

\*Export.Gov Posts Updated List of Export-Based Webinars

\*BIS Posts Updated List of Export Control and Compliance Training Seminars in 2012

## The ITA Compiles Four Big Numbers Highlighting Our Biggest Successes

**\*25%** – The percentage of growth in exports since the launch of the National Export Initiative in January 2010. Just in 2011, we've seen six record-breaking months of exports (January, March, April, July, August and September). This is a trend that will continue as long as American companies are finding buyers and partners in markets such as Brazil, India, Korea, and Russia.

**\*9.2 million** – The number of jobs supported by U.S. exports in 2010. This represents seven percent of total non-farm employment in the United States. Additionally, exports contribute, on average, an additional 18 percent to workers' earnings in the U.S. manufacturing sector.

**\*\$148.1 billion** – Our U.S. trade surplus in services through October 2011. In dollar terms, through the first ten months of 2011, growth of U.S. services exports are double the growth of our services imports. Through October, services exports are up 10.6 percent or \$48.2 billion from the same period last year. In 2010, travel and tourism accounted for 26 percent of our services exports, and business, professional, and technical services combined for 24 percent.

**\*15,555** – The number of foreign buyers who traveled to the United States to participate in 35 designated International Buyer Program (IBP) trade shows. The IBP recruits thousands of qualified foreign buyers, sales representatives, and business partners to attend U.S. trade shows each year, giving exhibitors excellent opportunities to expand business globally.



INTERNATIONAL  
**TRADE**  
ADMINISTRATION

## White House Issues Proclamation Adopting WCO 2012 HTS Changes

(Should be Effective in February)

According to the White House press release, the President has signed a Proclamation to amend the Harmonized Tariff Schedule (HTS) for the World Customs Organization-recommended tariff changes that are taking effect internationally on or about 01/01/12. As this Proclamation was signed "late", and takes effect 30 days after its publication in the Federal Register, the earliest it could take effect for imports into the U.S. is 02/01/12 (if it were published as early as January 3, 2012).

The Annexes containing the WCO-recommended HTS changes will not be attached to the Proclamation or published in the Federal Register. Instead, they will be posted as a report on the International Trade Commission (ITC) Web site in the near future.

In addition, the WCO-recommended HTS changes will be incorporated into the ITC's "official" online 2012 HTS, once it is posted; which is expected at the time the Proclamation takes effect. The changes will also be incorporated into the Government Printing Office's (GPO) subscription version of the paper 2012 HTS.

White House press release:

<http://www.whitehouse.gov/the-press-office/2011/12/29/presidential-trade-proclamation-modify-harmonized-tariff-schedule-united>

ITC

website: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm)

## CBP Issues Message on New FDA AofC Codes for Medical Device Kits

U.S. Customs and Border Protection (CBP) issued a CSMS message announcing that the Food and Drug Administration (FDA) has created two new Affirmation of Compliance (AofC) codes - KIT and DDM - to address shipments of kits containing finished devices imported into the U.S. According to FDA,

\*KIT should be used to identify individual devices are part of a kit. There is no associated qualifier.

\*DDM should be used to identify Domestic Device Manufacturer of any individual device within the kit. DDM is only to be used for those U.S. manufactured (American Goods Returned) devices declared as part of a kit. The code and qualifier should be the device registration number issued by FDA's Center for Devices and Radiological Health (CDRH) for the U.S. firm manufacturing the product identified in the FDA line.

\*DEV/DFE should continue to be used for the foreign manufacturers or exporters of individual finished devices within the kits.

FDA advises that the use of these codes affirms that the product identified in a FDA line meets the requirements specific to the code. While use of the codes is voluntary, transmission will help expedite the entry review process. Additionally, some kits contain drug products, which must comply with applicable labeling and approval requirements including, but not limited to, application number, registration, and listing. For example, the foreign firm's drug registration per the Food, Drug, and Cosmetic (FD&C) Act section 510(i) must include the known U.S. importers. If the registration does not include the importer or consignee, then detention may be indicated. FDA warns Kit importers should consider obtaining the AofC information from their vendors to minimize the need for manual review of applicable lines by the FDA.

CBP notes: This information only applies to medical device kit importers who have been specifically informed by CBP that they must transmit every device contained in a kit on a separate line (also referred to as "X" and "V" lines). Importers of medical device kits who transmit only the kit as a single line should continue to use the AofC codes DEV (foreign manufacturer medical device registration #) and LST (medical device listing #) applicable for the medical device kit. CBP CSMS message:

[http://apps.cbp.gov/csms/viewmssg.asp?Recid=18562&page=&srch\\_argv=&srchtype=&btype=&sortby=&sby](http://apps.cbp.gov/csms/viewmssg.asp?Recid=18562&page=&srch_argv=&srchtype=&btype=&sortby=&sby)

## CBP Posts Guidelines Used in Training for IPR Product Identification

U.S. Customs and Border Protection (CBP) posted guidelines and a sample of product identification training guides, which companies could use to help CBP personnel and customs administrations in the European Union identify counterfeit and piratical goods to prevent them from entering the U.S. or the EU. The product identification training guides would help customs officers and import specialists who inspect shipments and look for intellectual property rights (IPR) infringements. CBP notes that an effective guide should be brief and should contain information about the company, including the IP owned by the company and contact information for company contacts that can provide immediate assistance on administrative and technical matters regarding suspect merchandise. The guide should also contain information about the product, including physical characteristics of genuine articles, labeled photos of genuine and suspect articles, customs value, tariff heading, etc.

Training Guide guidelines:

[http://www.cbp.gov/linkhandler/cgov/trade/priority\\_trade/ipr/pubs/cpg\\_final\\_090306.ctt/cpg\\_final\\_090306.pdf](http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/ipr/pubs/cpg_final_090306.ctt/cpg_final_090306.pdf)

Training Guide sample:

[http://www.cbp.gov/linkhandler/cgov/trade/priority\\_trade/ipr/pubs/cbp\\_ident.ctt/cbp\\_ident.pdf](http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/ipr/pubs/cbp_ident.ctt/cbp_ident.pdf)

## CBP Posts Presentation on Simplified Entry Process

U.S. Customs and Border Protection (CBP) posted a presentation on Simplified Entry and the Industry Integration Centers. CBP advises that Simplified Entry data elements will satisfy both security and trade concerns by promoting the concept of "the owner of the data knows the data best." The presentation also includes flow diagrams comparing the current entry process to the simplified entry process. Under the simplified entry process, CBP and the trade will be able to identify and address potential risks earlier in the process. CBP notice: [http://www.cbp.gov/linkhandler/cgov/trade/trade\\_transformation/industry\\_int/external\\_trade\\_trans.ctt/external\\_trade\\_trans.pdf](http://www.cbp.gov/linkhandler/cgov/trade/trade_transformation/industry_int/external_trade_trans.ctt/external_trade_trans.pdf)

## CBP Working with CPSC - Seizes Toys from China for Excessive Lead and Phthalates

U.S. Customs and Border Protection (CBP) is working with Consumer Product Safety Commission (CPSC) investigators around the country to identify, examine, sample and test imported shipments that may be unsafe or hazardous. CBP announced that it recently seized the following imported toy shipments with high levels of lead and plastic phthalates from a Chicago-area warehouse before the merchandise was released into stores:

- (1) A shipment of FBI Action Play Sets from China after CPSC tested a sample which was found to contain excessive levels of lead. The shipment of 47,700 FBI Action Play Sets was valued at more than \$8,760; and
- (2) A shipment of plastic light musical balls from China after CPSC tested a sample which was found to contain excessive levels of phthalates. The shipment of 4,720 toy balls was valued at more than \$3,190.

CBP notice:

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/local/1221011.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/local/1221011.xml)

## CBP Commissioner Bersin Resigns on December 30, 2011 - Aguilar to be Acting Commissioner

U.S. Customs and Border Protection (CBP) Commissioner Bersin has formally notified the President of his intent to resign as Commissioner effective 12/30/11. According to a statement from Secretary of Homeland Security Napolitano, during Bersin's tenure "CBP has taken historic steps to secure our borders while facilitating legal travel and trade. Commissioner Bersin has also been instrumental in facilitating new international agreements and public-private partnerships as well as developing new paradigms throughout the world in combating terrorism and international crime." DHS Secretary Napolitano also announced that CBP Deputy Commissioner David Aguilar would serve as Acting Commissioner. Assistant Commissioner for the Office of Field Operations Thomas Winkowski will serve as Acting Deputy Commissioner.

Bersin's statement:

[http://www.cbp.gov/xp/cgov/newsroom/speeches\\_statements/c1\\_depart.xml](http://www.cbp.gov/xp/cgov/newsroom/speeches_statements/c1_depart.xml)

## Court of Appeals Rules that U.S. Cannot Impose CVD on Non-Market Economies Like China

The Court of Appeals for the Federal Circuit (CAFC) ruled that countervailing (CV) duties may not be imposed on goods from China or other non-market economies (NMEs), upholding a decision by the Court of International Trade (CIT), but on different grounds than the lower court, and overturning the attempts by the International Trade Administration (ITA) since 2007 to apply CV duties to goods from China (a reversal of its earlier policy of not applying CVD law in NMEs).

As reported, the CIT previously ruled that imposing CV duties in NMEs was unreasonable because of the high risk of double-counting when both antidumping (AD) and CV duties are assessed against NME goods, but the appeals court reasoned instead that the intent of Congress, in amending the CVD law in 1988 and 1994, was to put into law or "ratify legislatively" the principle that government payments cannot be characterized as subsidies in NMEs, and therefore CVD law does not apply to NMEs. In addition, the World Trade Organization has also ruled against the U.S. practice of imposing CV duties on NMEs for other reasons, and the U.S. has stated it will comply with the ruling.

The CIT reasoned that Congress "is presumed to be aware" of such administrative practices as the ITA's previous, long-established practice of not applying CVD law in NMEs (until 2007), so Congress's reenactment of countervailing duty law in 1988 and 1994 showed that it approved of, and adopted into law, the ITA's then-prevailing position that countervailing duties cannot be imposed on NME exports.

The CAFC also noted that the ITA had previously argued that subsidies by definition do not exist in NMEs, because "the notion of a subsidy is, by definition, a market phenomenon."

*(Continued below)*

On remand from the CIT, the ITA offset the CV duties it calculated for Chinese off-road tire producers against their AD duties to avoid double counting; however, the CIT found that the ITA's proposed CVD offset did not comply with the trade statute and that performing dual investigations was "unreasonable due to the expense associated with conducting an additional investigation that is essentially useless." The CAFC acknowledged these arguments but based its decision on its interpretation of Congressional intent instead. The appeals court found unpersuasive the ITA's arguments that:

- 1) Congress did not intend for the past practice of excluding CVDs to apply to all NMEs,
- 2) Congress made clear in 2000 that CVD law should be applied to China and
- 3) Unenacted legislation in 2010 (the Currency Reform for Fair Trade Act, H.R. 2378) also supported the change in practice.

According to an ITA list of AD and CV duty orders, there are 22 CV orders imposed on products from China and one CV order imposed on products from Vietnam.

Following the court's ruling, reaction from Capitol Hill included a press release from Senator Brown (D-OH), who announced plans to introduce a bill that would allow the Commerce Department to legally apply tariffs and other CV duties to Chinese imports that benefit from illegal export subsidies.

Senator Brown press release:

[http://brown.senate.gov/newsroom/press\\_releases/release/?id=6E15DEEE-C67C-48A1-9BDE-8E4A6C088145](http://brown.senate.gov/newsroom/press_releases/release/?id=6E15DEEE-C67C-48A1-9BDE-8E4A6C088145)

CAFC Appeal 2011-1107, -1108-1109 decided 12/19/11:

<http://www.cafc.uscourts.gov/images/stories/opinions-orders/11-1107.pdf>

## Census Posts Updated List of Export and AES Webinars and Conferences

Census recently posted to its Web site, its schedule for its upcoming meetings and presentations on the Automated Export System (AES) as well as other export issues as follows:

### **\*January 26-27 - Export Conference - Washington, DC**

Flyer: <http://www.census.gov/foreign-trade/aes/meetingsandpresentations/presentation-washington-jan2012.pdf>

Registration Form:

<http://www.mktechnology.com/ht/display/EventDetails/i/4868>

### **\*February 28-29 - Export Conference - San Antonio, TX**

Flyer: <http://www.census.gov/foreign-trade/aes/meetingsandpresentations/presentation-flyer-sanantonio-feb28-29-2012.pdf>

Registration Form:

<http://www.regonline.com/Register/Checkin.aspx?EventID=1041780>

### **\*March 7-8 - TBA**

Census notice: <http://www.census.gov/foreign-trade/aes/meetingsandpresentations/index.html#in-person>

## WTO Announces Schedule for Russia to Join

The World Trade Organization (WTO) posted the following notice:

\*On 12/16/11, Russia cleared the final hurdle to become a WTO member as Ministers adopted Russia's WTO terms of entry at the 8th Ministerial Conference in Geneva. Russia will have to ratify the deal within the next 220 days (by approximately July 22, 2012) and would become a full-fledged WTO member 30 days after it notifies the ratification to the WTO.

[http://www.wto.org/english/news\\_e/news11\\_e/acc\\_rus\\_16dec11\\_e.htm](http://www.wto.org/english/news_e/news11_e/acc_rus_16dec11_e.htm)

## WTO Approves Montenegro and Samoa as Members

World Trade Organization Ministers adopted Samoa and Montenegro's WTO terms of entry at the 8th Ministerial Conference in Geneva. Samoa will have until 06/15/12 to ratify its accession package and Montenegro until 03/31/12. Both countries will become full-fledged WTO members 30 days after they notify ratification of their respective accession packages to the WTO. U.S. Trade Representative (USTR) Kirk issued a statement welcoming their invitation to join the WTO: <http://www.ustr.gov/united-states-welcomes-invitations-montenegro-samoa-join-world-trade-organization-0>

WTO notice:

[http://www.wto.org/english/news\\_e/news11\\_e/acc\\_ws\\_m\\_17dec11\\_e.htm](http://www.wto.org/english/news_e/news11_e/acc_ws_m_17dec11_e.htm)

## FMCSA Final Rule Revises Hours of Service for Commercial Truck Drivers

The Federal Motor Carrier Safety Administration (FMCSA) recently issued its final rule to revise the hours-of-service (HOS) safety requirements for commercial truck drivers. FMCSA's final rule limits the use of the 34-hour restart provision to once every 168 hours and requires that anyone using the 34-hour restart provision have as part of the restart two periods that include 1 a.m. to 5 a.m. In addition, it includes a provision that allows truckers to drive if they have had a break of at least 30 minutes, at a time of their choosing, sometime within the previous 8 hours. This rule does not include a change to the current daily driving limit of 11 hours, or the 60- and 70-hour limits. In addition, the sleeper-berths rules are unchanged. According to the FMCSA, the final rule will mainly affect drivers who work more than 70 hours a week on a continuing basis. These drivers are mostly a subset of long-haul truckload drivers. Local drivers and less-than-truckload drivers, who rarely work more than 5 days a week, are unlikely to be affected.

The FMCSA's final rule will be published in the 12/27/11 Federal Register and take effect 02/27/12. The rule changes that affect Appendix B to 49CFR Part 386—Penalty Schedule; Violations and Monetary Penalties; the oilfield exemption in 49 CFR 395.1(d)(2); and the definition of on-duty time in 49 CFR 395.2 must be complied with on February 27, 2012. However, Compliance for all other rule changes is not required until July 1, 2013. FMCSA notes that because the new rule is more restrictive than the current rule, drivers and carriers may comply at any time after the effective date of the rule; in other words, if they are in compliance with the new rules, they will also be in compliance with the current rules. FMCSA final rule: [http://www.ofr.gov/OFRUpload/OFRData/2011-32696\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2011-32696_PI.pdf)

HOS final rule summary:

<http://www.fmcsa.dot.gov/rules-regulations/topics/hos-final/hos-final-rule.aspx>

DOT HOS press release:

<http://www.fmcsa.dot.gov/rules-regulations/topics/hos-final/statement.aspx>

FMCSA Q&A: <http://www.fmcsa.dot.gov/rules-regulations/topics/hos-final/qanda.aspx>

## Apple Patent Reveals Face Detection for iOS

Apple may be looking to add facial recognition to iOS, indirectly backing up previous iTV reports that Apple wants users to be recognized across multiple devices.

As stated in previous reports, Apple insiders claim that the company wants iOS to recognize the end-user across multiple devices, whether its the iPhone or the current hot topic, Apple's alleged iTV. Now, on the heels of recent iTV reports, the US Patent & Trademark Office has conveniently published a patent application from Apple entitled "[Low Threshold Face Recognition](#)" which could allow the end-user to unlock an iOS device via facial recognition, even when it's in sleep mode.

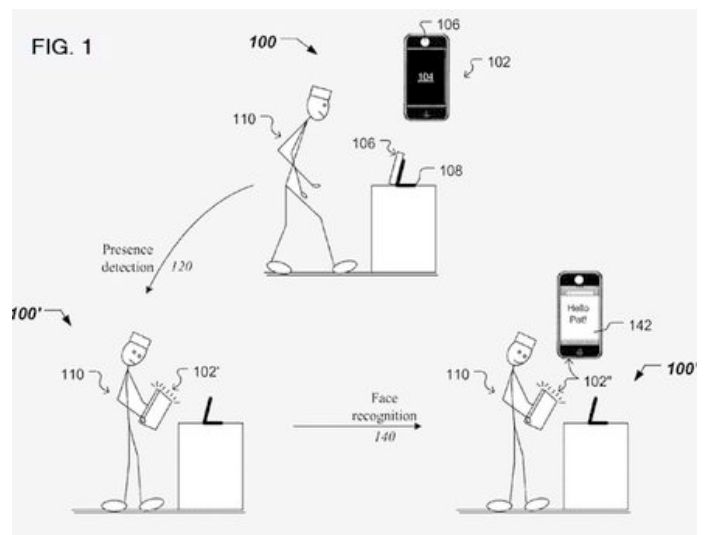
According to the application diagrams, the face recognition system doesn't use correlation matching, but rather uses a weighted difference map. The system will reportedly first apply an orange-distance filter to determine variations in skin tone, and then determine the position of high-information areas like the eyes and mouth. It will then analyze the weighted differences between the normalized target face (image) and the normalized detected face (user). After that, both frames are compared on a whole. If successful, the security system will acknowledge the user and unlock the device. Throw in a possible voice recognition via Siri, and you have a two-way security measure that eliminates the need for the current Slide to Unlock and PIN features.

But this new system could do more than just unlock the device -- it could provide user customization. For example, specific settings could be loaded onto an iPad once the device detects a specific user, loading a special wallpaper, app arrangement, notification settings and more. What's more, it could be possible to lock media to a specific user's face, thus leading back to Apple's talks with media execs about recognizing the user across multiple devices. If the user's face is stored in the cloud, it may be possible that the user could share a movie with friends on their own iTV or iPad 2.

*(Continued above)*

But as PatentlyApple points out, the feature is more or less bound to the user's device. "The methods disclosed in Apple's patent specification could adequately recognize a user associated with an iOS device without computing resources overhead that is characteristic of other face recognition techniques," the site reports.

"Therefore, the face detection and recognition methods described in Apple's specification could be implemented in hardware, for example in graphical processing units (GPUs) of the iOS device. Apple clarifies that the new face detection and recognition system will apply to the iPhone, iPad, iPod touch and MacBook.



## CBP Issues FR Notice Seeking Comment on Simplified Entry Information Collection

U.S. Customs and Border Protection (CBP) have requested comments on its Simplified Entry information collection; which is part of its information collection request for CBP Forms 3461 and 3461 ALT. CBP is proposing to extend the expiration date of this information collection with a change to the burden hours as a result of the proposed addition of the Simplified Entry Program (SEP). CBP advises that it is proposing to establish a new program for ACE entry summary filers called "Simplified Entry" in which importers or brokers may file Simplified Entry data in lieu of filing CBP Form 3461. This data includes the following required elements:

- \*Importer of record;
- \*Buyer name and address;
- \*Buyer employer identification number (consignee number);
- \*Seller name and address;
- \*Manufacturer/supplier name and address;
- \*Harmonized Tariff Schedule (HTS) 10-digit number;
- \*Country of origin;
- \*Bill of lading;
- \*House air waybill number;

*(Continued above)*

- \*Bill of lading issuer code;
- \*Entry number;
- \*Entry type; and
- \*Estimated shipment value.

There will also be three optional data elements including:

- \*Container stuffing location;
- \*Consolidator name and address; and
- \*Ship to party name and address.

According to CBP, the data collected under the proposed SEP is intended to expedite the entry process. CBP is asking for comments from the general public and other Federal agencies on

- \*Whether this collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
  - \*The accuracy of the agencies/components estimates of the burden of this collection of information;
  - \*Ways to enhance the quality, utility, and clarity of the information to be collected; and
  - \*Ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.
- CBP Contact – Tracey Denning (202) 325-0265  
 CBP FR Notice <http://www.gpo.gov/fdsys/pkg/FR-2011-12-30/pdf/2011-33604.pdf>



## CBP Bulletin 12/28/11 - Broader Use of Transaction Value for Related Party Sales

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 46, No. 1); CBP proposes to provide guidance to the trade and revoke a ruling and similar treatment regarding the use of transaction value for "related party" sales and post-importation adjustments. CBP advised that "related party" trade in 2010 accounted for 40.8% (\$1,295 billion) of total goods trade. Related parties often have formal intercompany policies in place for setting the price of imports (i.e., the transfer price between related parties), and may provide for various adjustments to be made to the transfer price after importation.

According to CBP, before taking this action, consideration will be given to any written comments received by 01/27/12. In addition, any party who has received a ruling or decision on the merchandise that is subject to the proposed revocation, or any party involved with a substantially identical transaction, should advise CBP by the date that written comments on the proposed ruling is due. 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 agents for importations subsequent to the effective date of the final decision in this notice. NOTE: persons who previously provided comments in response to CBP's Website notice on this proposed guidance, do not need to resubmit them unless there are additional points they would like CBP to consider.

### Five Factors Proposed for Transaction Value and Adjustments

CBP is proposing to issue HQ W548314 to state that subject to meeting five factors, the transaction value method of appraisalment will be allowed when a related party sales price is subject to upward and/or downward post-importation adjustments that are made pursuant to formal

*(Continued above)*

transfer pricing policies and specifically related (directly or indirectly) to the declared value of the merchandise. The following five factors that must be adhered to are:

- \*A written "Intercompany Transfer Pricing Determination Policy," which sets out how the transfer price is to be determined prior to the importation;
- \*The importer/buyer is the U.S. taxpayer, and it uses its transfer pricing methodology in filing its corporate income tax returns;
- \*The company's transfer pricing policy specifically covers the products for which the value is to be adjusted;
- \*The policy specifies what adjustments must be made to the transfer price, and the company provides detailed explanations and calculations of the adjustments incurred and claimed in the U.S.; and
- \*There is an absence of other conditions which may indicate that the compensating adjustments do not result in an arm's length price between the parties.

CBP also notes that its decisions to allow the use of transaction value for related party transactions and post importation adjustments will be made on a case-by-case basis. Any post importation adjustments must be made using Reconciliation.

As reported in HQ 547654, CBP determined that transaction value did not apply because the price was not considered to be fixed or determinable pursuant to an objective formula prior to importation. CBP is now proposing to revoke HQ 547654 and rule that transaction value applies, because based on the five factors, the importer's transfer pricing policy is an objective formula in place prior to importation for purposes of determining the price within the meaning of 19 CFR 152.103(a)(1).

CBP is also proposing that post-importation adjustments (both downward and upward), to the extent they occur, may be taken into account in determining the transaction value.

*(Continued below)*

In this particular case, the post-importation adjustments made pursuant to the transfer pricing policy simply reflect what should have been reported as the invoice price upon entry, had the exact price information of the imported merchandise been available at the time. Any such changes in the transfer price should be immediately reported to CBP. Also in this particular case, the importer uses reconciliation to report downward and upward post-importation adjustments to the value initially declared upon the importation of the merchandise. CBP continues to find that the reconciliation program must be used to properly apply transaction value and account for the total value for the imported merchandise where a formal transfer pricing study, policy, or an Advance Pricing Agreement (APA) allows for upward or downward post importation adjustments that directly (or indirectly) relate to the value of the merchandise. CBP advises the application of this decision is subject to the verification by the Office of Regulatory Audit should an audit be conducted. CBP Bulletin

(12/28/11) [http://www.cbp.gov/xp/cgov/trade/legal/bulletins/decisions/bulletins\\_2011/vol46\\_12282011\\_no1](http://www.cbp.gov/xp/cgov/trade/legal/bulletins/decisions/bulletins_2011/vol46_12282011_no1)  
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## CPSC Posts Information on Children's Sleepwear Compliance Obligations

The Consumer Product Safety Commission (CPSC) recently sent a letter to manufacturers, distributors, importers and retailers of children's sleepwear to restate the agency's sleepwear policy, position on children's loungewear, and to remind them of their obligations under the Consumer Product Safety Improvement Act of 2008 (CPSIA).

CPSC reports that the children's sleepwear standards were developed to prevent such products from igniting due to exposure to ignition sources such as matches/lighters, candles, ranges, stoves, space heaters, and fireplaces. It also notes that most of the ignition incidents occurred while children were awake and wearing sleepwear or sleep-related items.

*(Continued above)*

In addition, CPSC advises that it intends to take enforcement action against firms that market loungewear items that do not comply with the children's sleepwear standards (16 CFR Parts 1615 and 1616). The letter also includes a summary of the CPSIA requirements for manufacturers and importers of children's sleepwear sold online or in stores. These requirements include tracking labels; a certificate of compliance based on third-party testing; complying with the requirements for phthalates; and complying with the limits on lead content and lead in surface coatings on snaps, zipper pulls and elsewhere on the product. CPSC reminds the trade that it is a violation of federal law to manufacture for sale, sell, offer for sale, import, and/or distribute garments that are subject to and fail to meet the children's sleepwear standards.

It adds that any person who fails to comply with the requirements of section 14 of the Consumer Product Safety Act is subject to fines of up to \$100,000 for each violation not to exceed a maximum of \$15 million for any related series of violations, and imprisonment for not more than five years, or both. CPSC adds that the maximum penalty increases to \$15.15 million after 01/01/12. In addition, firms could be subject to injunctive action or the products could be subject to seizure to prevent further distribution of violative products.

CPSC press release (12/23/11)  
<http://www.cpsc.gov/cpscpub/prerel/prhtml/12/12072.html>

Children's sleepwear standards:  
<http://www.cpsc.gov/businfo/sreg.html>

CPSC notice:  
<http://www.cpsc.gov/businfo/sleepwearpolicy.pdf>



## State Department and BIS Issue Proposed Rule to Revise USML Cat VI and CCL

The State Department recently issued a proposed rule to revise USML Category VI (surface vessels of war and special naval equipment) to narrow the articles controlled on the USML, and to make this list of items more positive. BIS is also proposing the creation of five new 600 series ECCNs to control vessels of war and related articles removed from Category VI that would instead be controlled by the CCL. The State Department is not proposing any tiering at this time, and is still developing its definition of "Specially Designed." Written comments on both proposed rules are due by 02/06/12. As reported, the State Department's proposed rule would revise USML Category VI, covering surface vessels of war and special naval equipment, to establish a clear bright line between the USML and the CCL for the control of these articles. The proposed revision would narrow the types of surface vessels of war and special naval equipment controlled on the USML to only those that warrant control under the stringent requirements of the Arms Export Control Act (AECA); complete details posted.

The BIS proposed rule would also create five new "600 series" Export Control Classification Numbers (8A609, 8B609, 8C609, 8D609, and 8E609) in the CCL for surface vessels of war and related articles that the President determines no longer warrant control under USML Category VI. BIS also plans to publish a proposed rule describing how the new controls described in this and similar notices would be implemented, such as through the use of "grandfather" clauses and additional exceptions. The goal of such amendments would be to give exporters sufficient time to implement the final versions of such changes and to avoid, to the extent possible, situations where transactions would require licenses from both the State Department and the Commerce Department.)

State proposed rule (Public Notice 7736, FR Pub 12/23/11) <http://www.gpo.gov/fdsys/pkg/FR-2011-12-23/pdf/2011-32865.pdf>

BIS proposed rule (D/N 111020643-1642-01, FR Pub 12/23/11)

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-23/pdf/2011-32867.pdf>

## Export.Gov Posts Updated List of Export-Based Webinars

[Export.gov](http://www.export.gov) has announced that registration is available for a number of upcoming export-based webinars.

The following webinars are available in January 2012 - March 2012:

**\*01/25/2012** - Letters of Credit Basics

**\*01/30/2012** - Design and Construction Opportunities in Kazakhstan (multiple industry sectors)

**\*02/09/2012** - Business Opportunities in Indonesia

**\*02/15/2012** - Reconstruction Opportunities in Haiti (multiple industry sectors)

**\*02/16/2012** - Export Documentation Basics

**\*02/29/2012** - New EU Regulations for Cosmetics (cosmetics/toiletries)

**\*03/01/2012** - Dispute Resolution

**\*03/09/2012** - Business Opportunities in Malaysia

**\*03/21/2012** - A Basic Guide to Exporting Webinar: Understanding Free Trade Agreements

## USTR Issues FR Notice Seeking Comments on Special 301 Countries with Inadequate IPR Protection

The Office of the U.S. Trade Representative (USTR) issued a notice requesting comments to assist it in identifying countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection as part of its 2011 "Special 301" annual review. Public comments are due by 02/10/12. Foreign government comments are due by 02/17/12. USTR reports that the Special 301 Committee will hold a public hearing for all interested parties on 02/23/12. As reported, USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision of whether particular trading partners should be identified as Priority Foreign Countries by Section 182 of the Trade Act of 1974, referred to as the "Special 301" provision, or placed on the Priority Watch List or Watch List. Priority Foreign Countries are countries identified to have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on relevant U.S. products.

Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas. USTR requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention.

USTR advises that written comments should include a description of the problems experienced by the submitter and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. USTR FR Notice: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-28/pdf/2011-33289.pdf>

## EPA Proposes New Use Rules for 17 Chemicals under TSCA -Seeks Comments-

The Environmental Protection Agency (EPA) proposed significant new use rules (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 17 chemical substances which were the subject of premanufacture notices (PMNs). Fifteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action would require persons who intend to manufacture, import, or process any of these 17 chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs. Comments are due by 01/27/12.

EPA FR Notice:

[http://www.ofr.gov/OFRUpload/OFRData/2011-33261\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2011-33261_PI.pdf)



## Census Posts 2012 Schedule B to Website

Census announced that its online Schedule B "browse" function now reflects the 01/01/12 export codes, including all of the World Customs Organization-recommended HS changes. The Automated Export System (AES) mainframe will be updated for the 2012 Schedule B export codes, as well as the preliminary 2012 HTS import codes. AESDirect and AESPcLink will also be updated to match the mainframe. Census explains that while the 2012 Schedule B export codes in AES will reflect all the WCO-recommended HS changes, the 2012 HTS import codes in AES will exclude them and remain preliminary (i.e., only reflecting the 484(f) changes at the statistical level) until the Proclamation implementing the WCO-recommended changes for imports is in effect (which is expected to be in early February 2012). Once the Proclamation is in effect, the HTS import codes in AES will be updated to reflect the WCO-recommended changes.

2012 Schedule B "browse" webpage:

<http://www.census.gov/foreign-trade/schedules/b/2011/index.html>

Census notice:

[http://export.gov/logistics/eq\\_main\\_042517.asp](http://export.gov/logistics/eq_main_042517.asp)

## USA Export Expo Creates Online Trade Show for U.S. Exporters

Think Global, the publishers of Commercial News USA, has developed the USA Export Expo which brings U.S. exporters and buyers from around the world together for online networking, information exchanges and e-commerce. USA Export Expo enhances the benefits of trade shows, meetings, and conventions, while providing a continuous, centralized venue with streaming media, social networking, and analytics.

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

## DDTC Posts Report on Unauthorized Use of Exported Defense Articles

The State Department's Directorate of Defense Trade Controls (DDTC) posted to its Web site a report outlining the fiscal year 2010 performance of its "Blue Lantern" end-use monitoring program for defense exports. The report reveals that in FY 2010 about 21% of all Blue Lantern end-use checks were unfavorable indicating that the exported items are being used for unauthorized purposes.

The Blue Lantern program monitors the end-use of commercially exported defense articles and defense services subject to licensing or other authorizations under section 38 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). According to the report, in FY 2010 the Blue Lantern program set a new record for the number of checks initiated for the eighth year in a row and also hit an all-time high for the number of countries in which checks were conducted. Of the 723 cases closed in FY 2010, 150 (21%) were determined to be unfavorable. Unfavorable Blue Lantern cases may result in the rejection, denial or revocation of a license application, removal of a party, update of the DDTC Watch List, or referral to the office's Enforcement Division for appropriate action.

As reported, of the 74 referrals to END, 18 resulted in directed disclosures and 26 went to federal law enforcement for possible criminal investigation. The report also lists the reasons for unfavorable checks in FY 2010. DDTC notes that the fluctuations year-over-year are not necessarily due to a change in behavior among foreign parties but instead are likely due in part a combination of factors weighing into individual compliance analyst targeting decisions, such as regional diversion concerns, commodity sensitivity and unfamiliar foreign parties.

DDTC report:

[http://www.pmdtc.state.gov/reports/documents/End\\_Use\\_FY2010.pdf](http://www.pmdtc.state.gov/reports/documents/End_Use_FY2010.pdf)

## BIS Posts Updated List of Export Control and Compliance Training Seminars in 2012

The Bureau of Industry and Security (BIS) posted an updated schedule for its export control and compliance training outreach efforts. BIS advises instructors are experienced export administration and regulatory policy specialists, engineers and enforcement personnel from BIS' Washington, D.C. headquarters and field offices, as well as representatives from other U.S. Government agencies. BIS also offers an extensive library of online training modules and pre-recorded webinars. BIS also offers export control conferences where senior U.S. Government officials discuss current issues and trends in export control policies, regulations and practices. BIS export control and compliance training outreach efforts through August 2012 is posted. Outreaches scheduled through May 2012 include:

- \***Jan 24-25** - Scottsdale, AZ - Complying with U.S. Export Controls
- \***Feb 7-8** - New Orleans, LA - Complying with U.S. Export Controls
- \***Feb 9** - New Orleans, LA - How to Develop an Export Management & Compliance Program
- \***Feb 15-16** - Orlando, FL - Complying with U.S. Export Controls
- \***Feb 27-28** - Irvine, CA - 7th Annual Export Control Forum
- \***March 6-7** - Birmingham, AL - Complying with U.S. Export Controls
- \***March 8** - Birmingham, AL - Complying with International Traffic in Arms Regulation (ITAR)
- \***March 14** - Shreveport, LA - Essentials of Export Controls
- \***March 15** - Shreveport, LA - Technology Controls
- \***March 16** - Shreveport, LA - Encryption Controls

*(Continued above)*

\***March 15-16** - San Diego, CA - Complying with U.S. Export Controls

\***April 4-5** - Denver, CO - Complying with U.S. Export Controls

\***April 17** - Portsmouth, NH - Essentials of U.S. Export Controls

\***April 18** - Portsmouth, NH - How to Develop an Export Management & Compliance Program

\***April 19** - Portsmouth, NH - Complying with International Traffic in Arms Regulation (ITAR)

\***April 24-25** - Milpitas, CA - Complying with U.S. Export Controls

\***April 26** - Milpitas, CA - Encryption Controls

\***May 9-10** - Newport Beach, CA - Complying with U.S. Export Controls

\***May 15-16** - Memphis, TN - Complying with U.S. Export Controls

\***May 17** - Memphis, TN - Complying with International Traffic in Arms Regulation (ITAR)

BIS Outreach listing:

<http://www.bis.doc.gov/seminarsandtraining/elsem.htm>



## New CT Laws Promise Manufacturing Assistance

Monday, 09 January 2012 17:22 BNH

HARTFORD — New legislation promoting economic growth in Connecticut became effective January 1, including provisions for manufacturing assistance and job creation.

Public Act 11-1, "An Act Promoting Economic Growth and Job Creation in the State," authorizes additional state bonding for the Manufacturing Assistance Act and expands the Manufacturing Reinvestment Account program, as well as provides tax cuts for companies that hire new employees.

The act increases bond authorization to the state's Department of Economic & Community Development (DECD) for the Manufacturing Assistance Act (MAA) from \$40 million to \$140 million in the 2012 fiscal year, and \$280 million for the 2013 fiscal year.

In 2012, \$20 million of that funding will be earmarked for small-business development (companies with 50 or fewer employees), while \$40 million will be set aside for the following fiscal year, with any remaining money at the end of the year to be set aside for general MAA use.

The act also doubles the limit on the number of small manufacturing companies that the DECD can select for its Manufacturing Reinvestment Account (MRA) program, from 50 to 100. It also doubles from \$50,000 to \$100,000 the maximum amount a company can deposit in an MRA.

The MRA allows qualifying small manufacturers to deposit 100 percent of their domestic gross receipts up to the maximum amount each year for five years in an interest-bearing MRA to save for training or workforce expansion, or for purchasing machinery, equipment or facilities. Corporate or personal income taxes on the MRA funds are deferred until the company withdraws them, at a taxable rate of 3.5 percent.

Another new provision in the act is a Job Expansion Tax Credit for companies that create new jobs between January 1, 2012 and January 1, 2014. The three-year credit awards \$500 per month per new employee, or \$900 if the hired employees are from Connecticut and meet additional criteria.

The act also allows state and quasi-public agencies to contract with private entities for building, financing, operating or maintaining facilities. There is also an expansion of the types of productions that qualify for the state's film production tax credits. Additional legislation effective January 1 may be viewed at [cga.ct.gov](http://cga.ct.gov).