



EIB World Trade Headlines

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NEWSLETTER NOTES

FOR IMMEDIATE RELEASE THROUGH BIS

(Thursday, June 16th, 2011)
Office of Public Affairs 202-482-2721
www.bis.doc.gov

Export Control Reform Initiative: Strategic Trade Authorization License Exception

WASHINGTON - U.S. Commerce Secretary Gary Locke today announced the next step in President Obama's export control reform (ECR) initiative aimed at strengthening U.S. national security and ensuring the competitiveness of American companies abroad. The Department will implement today a new license exception, Strategic Trade Authorization (STA) that will facilitate exports between the United States and partner countries while enhancing the competitiveness of key industrial base sectors. The Export Control Reform Initiative aims to build higher fences around a core set of items whose misuse can pose a national security threat to the United States. By facilitating trade to close partners and allies, the Commerce Department can better focus its resources ensuring the most sensitive items do not end up where they should not. "This is an important first step towards creating a system that addresses the serious threats we face in today's changing economic and technological landscape. This new license exception will eliminate the need for U.S. exporters to seek licenses in nearly 3,000 types of transactions annually, affecting an estimated \$1.4 billion in goods and

*FOR IMMEDIATE RELEASE...

*CBP Issues Amended Version of Guidelines...

*State Department Publishes List of Countries...

*BIS Posts Updated List...Seminars/Training

*Export.Gov Posts Schedule of Upcoming Webinars

* CRS Posts Report to Congress on Growing Trade with Vietnam and Issues Involved

* FDA Posts Draft Guidance Document...Nanotechnology

* EPA Posts Information On Over 150 Chemicals in Consumer Products That May Be Harmful

* USITC Issues Final Report on Proposed Changes for 2012 HTS

"The new license exception will allow us to focus our resources on items that pose a significant national security risk and help facilitate U.S. exports."

"This is a significant step in President Obama's Export Control Reform Initiative which enhances our national security and makes U.S. exporters more competitive by easing their licensing burden for exports to partners and allies," said Under Secretary of Commerce for Industry and Security Eric L. Hirschhorn. Items such as electronic components for use on the International Space Station, cameras for search and rescue efforts for fire departments, components for civil aviation navigation systems for commercial aircraft, airport scanners, and toxins for vaccine research will be eligible for the new license exception.

At the same time, the license exception establishes new safeguards designed to ensure Department of Commerce approval is obtained before controlled items exported under the exception are re-exported outside of authorized destinations.

To see a copy of the regulation published in the Federal Register Notice, go to <http://www.gpo.gov/fdsys/pkg/FR-2011-06-16/pdf/2011-14705.pdf>.

Background

The President has directed a broad-based interagency reform of the U.S. export control system with the goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats and adapting to the changing economic and technological landscape.

CBP Issues Amended Version of Penalty & Mitigation Guidelines for Advance Electronic Cargo Information (including ISF)

In the current issue of the Customs Bulletin, CBP has issued an amended version of its 2005 mitigation guidelines for penalties involving advance electronic cargo information. The amended version is effective on publication, and changes the language regarding C-TPAT members, and newly lists the maximum penalty per conveyance arrival as \$100,000. The revised guidelines correct the earlier text to state that C-TPAT mitigation benefits are available to a carrier, non-vessel-operating common carrier (NVOCC), slot charterer, or other authorized electronic transmitter, rather than just carriers as previously stated. However, the guidelines newly state that the C-TPAT member's status must be validated (rather than merely certified) and the member must be in good standing in the program to be eligible to receive the mitigation. Other changes to the guidelines include:

1. Adds a maximum of \$100,000 per conveyance arrival for liquidated damages claims.
2. Corrects the guidelines for first violations to say that all C-TPAT electronic transmitters may receive additional mitigation, but now only if validated and in good standing. CBP also rewords the 50% mitigation available.
3. Adds a new section to define "subsequent violation" and gives four examples of such. CBP notes that the definition was inadvertently omitted.

CBP contact: Chris Pappas (202) 325-0109
CBP Dec.11-11 (Bulletin Volume 45, No. 22, 05/25/11):

http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2011/vol45_05252011_no22/45notices_22.ctt/45notices_22.pdf

AMS Issues Proposed Ruled That Would Triple Cotton Import Tax HTS Numbers and Raise Rate 16%

The Agricultural Marketing Service (AMS) issued a proposed rule that would amend the Cotton Board Rules and Regulations to:

1. increase the supplemental assessment rate,
2. revise the textile trade conversion factors, and
3. greatly expand the number of Harmonized Tariff Schedule (HTS) numbers subject to assessments under the upland Cotton Research and Promotion Order.

According to AMS, these changes are necessary to ensure that assessments collected on imported raw cotton and the cotton content of imported products are the same as assessments collected on domestically produced cotton. Comments are due by 07/05/11.

As reported, AMS is proposing to increase the value assigned to imported cotton for the purpose of calculating the supplemental portion of the assessment¹ by 16% (from \$0.01088 to \$0.012665 per kilogram of imported cotton). According to AMS, this increase reflects the increase in the weighted average price of upland cotton received by U.S. farmers during the period January-December 2010. AMS is also proposing, at the request of the Cotton Board, to revise the textile trade conversion factors used to determine the raw fiber equivalents of imported cotton-containing products to reflect updated textile technologies and to more accurately estimate the amount of cotton contained in cotton-containing imports. AMS reports that this will assure a more fair and accurate assessment of imported cotton-containing products. In addition, in response to a request from the Cotton Board, AMS is proposing to expand the HTS tariff numbers affected by the assessment from the current 706 to 2,371 in order to assess all imported cotton and cotton-containing products, instead of just 89% of such products.

(Continued above)

AMS reminds the trade that under the Cotton Research and Promotion Regulations, importers meeting certain criteria are exempt from assessments and these exemptions would still apply.

U.S. Customs and Border Protection (CBP) has previously advised for articles which do not contain any cotton but are properly classified under an HTS number that is subject to a cotton assessment, the exemption number "999999999" should be reported in column 34 to indicate that no fee is required.

AMS contact – Shethir Riva (540) 361-2726
AMS notice (FR Pub 06/03/11)

<http://www.gpo.gov/fdsys/pkg/FR-2011-06-03/pdf/2011-13495.pdf>

State Department Publishes List of Countries Certified to Export Shrimp To The U.S

The State Department recently announced that on 04/22/11, it certified 38 nations and Hong Kong as meeting the requirements set by Section 609 of Public Law 101-162 for continued importation of shrimp and products of shrimp into the U.S. Section 609 prohibits importation of shrimp harvested in a manner that may adversely affect some sea turtle species. The 38 nations and one economy that are certified to continue exporting shrimp to the U.S. are divided into two lists. A State Department DS-2031 form signed by the exporter and importer must accompany all shrimp imports into the U.S. Non-certified countries may import shrimp to the U.S., provided that a government official of the harvesting nation also certifies on the DS-2031 that the shrimp was harvested in a manner not harmful to sea turtles. The State Department notes that exception 7.A.(2) (Harvested using turtle excluder devices (TEDs), on the DS-2031 form is currently a valid exception to the prohibition on imports from nations not certified under P.L. 101-162. However, the State Department must determine in advance that a country wishing to use this exception has in place an enforcement and catch segregation system for making such individual shipment certifications. State Contact – Marlene Menard (202) 647-5827

State Department notice (FR Pub 06/02/11)
<http://www.gpo.gov/fdsys/pkg/FR-2011-06-02/pdf/2011-13702.pdf>

ITA Issues Notice Seeking Members for District Export Councils

The International Trade Administration (ITA) is seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as members of one of the 60 District Export Councils (DECs) nationwide. DECs are closely affiliated with the U.S. Export Assistance Centers of the U.S. and Foreign Commercial Service (FCS). DECs also play a key role in the planning and coordination of export activities for their communities. Nominations must be received by COB on 07/15/11.

ITA notice:

<http://www.gpo.gov/fdsys/pkg/FR-2011-06-02/pdf/2011-13711.pdf>

BIS Posts Updated List of Export and Compliance Training Seminars

The Bureau of Industry and Security (BIS) posted the following updated schedule for its export control and compliance training outreach efforts:

July 19-21, 2011 - Washington, DC - Update 2011

August 10-11, 2011 - Los Angeles, CA - Complying with U.S. Export Controls

September 13-14, 2011 - Smithfield, RI - Complying with U.S. Export Controls

September 21-22, 2011 - Santa Clara, CA - How to Develop an Export Management and Compliance Program
BISnotice: <http://www.bis.doc.gov/seminarsandtraining/elsem.htm>

Export.Gov Posts Schedule of Upcoming Webinars

According to Export.gov, registration is available for a number of upcoming export-based webinars. The following webinars are available in June - November 2011:

06/21/11 - Establishing Your Business in Brazil - Finding Partners & Support

06/22/11 - A Basic Guide to Exporting: Understanding Export Controls

06/22/11 - Selling to the Government of Canada (GOC)

06/27/11 - Australia 's National Broadband Network - Opportunities For US ICT Companies

06/28/11 - Trade Events and Opportunities for Partnerships in Brazil for A/E/C Firms

07/14/11 - Opportunities in Turkey

07/27/11 - European Union: Complying with RoHS II Requirements

Export.gov also has certain previously recorded webinars available, which include market and industry information from industry experts. Previously recorded webinars:

http://www.export.gov/mrktresearch/eg_main_018213.asp

ITA Posts Information on Clean Tech Trade Mission to India

The International Trade Administration's U.S. and Foreign Commercial Service (FCS) is organizing a Clean Technologies Trade Mission to India slated for early November 2011 to be led by Under Secretary for International Trade, Francisco Sánchez. As reported, the trade mission will target a broad range of clean energy and environmental technologies including wind, hydro, waste-to-energy, solar power generation and clean coal; energy efficiency including smart grids; and environmental technologies such as water and waste water treatment and solid waste management. Applications are due by 09/09/11.

FCS notice: <http://www.gpo.gov/fdsys/pkg/FR-2011-06-10/pdf/2011-14371.pdf>

State Department Posts Information on OECD Guidelines for Multinationals on Human Rights - Due Diligence in Supply Chain

The State Department has announced that Secretary of State Clinton and other Ministers have adopted a new update to the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises which includes recommendations for the exercise of due diligence in supply chains. The Guidelines are not limited to OECD members and presently have 42 adherents, including some emerging economies. The current update incorporates a new human rights chapter that draws upon the Guiding Principles for business and human rights developed by the United Nations Special Representative for Human Rights and Business. The new chapter also incorporates guidance on exercising due diligence regarding human rights in the context of supply chain relationships. According to the State Department, this update is a step forward in the collaborative efforts of business, labor, governments, and other key stakeholders to foster the positive contribution that business can make in realizing social objectives together with their contribution to job creation, economic growth and the production of value for their shareholders.

State Department

notice: <http://www.state.gov/r/pa/prs/ps/2011/05/164453.htm>



EPA Issues Direct Final Rule on Electronic TSCA New Use Change Requests

The Environmental Protection Agency (EPA) issued a direct final rule amending the procedures for requests for modification or revocation of Toxic Substances Control Act (TSCA) section 5 significant new use notification (SNUN) requirements by establishing electronic submission requirements. EPA had issued a final rule in January 2010 introducing electronic reporting requirements for TSCA section 5 submissions and supporting documents but inadvertently left out requirements for electronic submission of requests for modifications or revocations of SNUN requirements. According to EPA, the direct final rule is effective 07/26/11, unless EPA receives adverse comment on or before 06/27/11; in which case, EPA will withdraw the direct final rule and issue a proposed rule. EPA contact – Greg Schweer (202) 564-8469 EPA notice (FR Pub 05/27/11)

<http://www.gpo.gov/fdsys/pkg/FR-2011-05-27/pdf/2011-13250.pdf>

EU Proposes Strengthening of IPR Enforcement

The European Commission recently adopted a comprehensive strategy to revamp the legal framework in which intellectual property rights (IPR) operate. Among the first deliverables of this strategy is a proposal for a new regulation to reinforce customs' ability to fight trade of IPR-infringing goods. The following are the key policy actions in the EC's IPR strategy:

- Widening scope of customs' IPR enforcement;
- Unified and specialized patent court;
- Modernized trade mark system;
- Multi-territorial copyright licensing; and
- Secure EU-level Geographical indications (GIs) for non-agricultural products.

(Continued below)

EU FAQ document:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/630&format=HTML&aged=0&language=en&guiLanguage=en>

EU press release (05/24/11)

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/375&format=HTML&aged=0&language=EN&guiLanguage=en>

EC proposal:

http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/legislation/com285_en.pdf

EU notice:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP%2F11%2F630&format=HTML&aged=0&language=en&guiLanguage=en>

CRS Posts Report to Congress on Growing Trade with Vietnam and Issues Involved

The Congressional Research Service (CRS) issued a report stating that Congress may play an important role in a number of bilateral trade issues that have emerged between Vietnam and the U.S. According to the report, bilateral trade between the countries may increase if both nations become members of the Trans-Pacific Strategic Economic Partnership Agreement (TPP). However, Vietnam is also a party to negotiations to form a larger pan-Asian regional trade association based on the Association of Southeast Asian Nations (ASEAN) that could exclude the U.S. and prove to be an alternative to the TPP. CRS reports there have also been problems with U.S. imports of specific products from Vietnam which could generate future tension between the countries. In addition, the CRS reports that the 112th Congress may play an important role in addressing Vietnam's application for acceptance into the U.S. Generalized System of Preferences (GSP) program and its participation in negotiations of a Bilateral Investment Treaty (BIT) with the U.S.

CRS R41550 (04/05/11)

http://assets.opencrs.com/rpts/R41550_20110405.pdf

South Korea Customs Working To Stop Illegal Transshipments

As reported by the Korean Embassy in Washington, D.C., the Korean Customs Service (KCS) announced several new enforcement strategies to prevent goods not produced in South Korea from obtaining preferential tariff treatment under the pending U.S.-Korea free trade agreement (FTA) and other FTAs. KCS has established an office with 157 customs officers to investigate and stop illegal transshipments. This office will be equipped with a real-time E-Seal system that can track the entire process, including entry, unloading, transportation, shipping and departure. KCS will also carry out targeted inspections of high-risk cargoes, which include all textile shipments, and increase its cooperation with Korea's trading partners. According to the statement, these measures "will reinforce the stringent anti-trans-shipment rules already included" in the FTA.

<http://www.strtrade.com/wti/wti.asp?pub=0&story=37244&date=6%2F9%2F2011&company>

Information Available on AGOA

The African Growth and Opportunity Act (AGOA) was signed into law on 05/18/2000 to offer incentives for African countries to open their economies, build free markets and encourage investment by U.S. companies in the region. Each year, the AGOA Forum brings together government leaders and several African and American private sector stakeholders. Recently 37 African countries are represented in the forum. The tenth annual Forum took place in Zambia 06/09/11 with the theme "Enhanced Trade Through Increased Competitiveness, Value Addition and Deeper Regional Integration".

During the conference, there were sessions for the private sector and civil society as well as involvement of participants of the African Women's Entrepreneurship Program (AWEP). Young business leaders will also take part in activities around the AGOA Forum. AGOA informational website: www.agoa.gov

FDA Posts Draft Guidance Document on Identifying Regulated Products with Nanotechnology

The Food and Drug Administration (FDA) released a draft guidance, "Considering Whether an FDA-Regulated Product Involves the Application of Nanotechnology," to provide manufacturers, suppliers, importers and other industry stakeholders with greater certainty about the use of nanotechnology. A notice of availability of this draft guidance will be published in the Federal Register, and comments will be due within 60 days of publication. According to FDA, nanotechnology is the science involving manipulation of materials on an atomic or molecular scale and is an emerging technology with a broad range of potential applications, such as increasing bioavailability of a drug, improving food packaging and in cosmetics. Nanotechnology generally involves materials made up of particles that are at least one billionth of a meter in size. The draft guidance outlines FDA's view on whether regulated products contain nanomaterials or involve the application of nanotechnology. For products subject to premarket review, the FDA intends to apply the points contained in the draft guidance, when finalized, to better understand the properties and behavior of engineered nanomaterials. For products not subject to premarket review, FDA will urge manufacturers to consult with FDA early in the product development process so questions related to the regulatory status, safety, effectiveness or public health impact of these products can be adequately addressed.

FDA complete draft guidance:

<http://www.fda.gov/RegulatoryInformation/Guidances/ucm257698.htm>

Q&A document on FDA draft guidance:

<http://www.fda.gov/ScienceResearch/SpecialTopics/Nanotechnology/ucm258391.htm>

FDA's nanotechnology Web page:

<http://www.fda.gov/ScienceResearch/SpecialTopics/Nanotechnology/default.htm>

FDA notice:

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm258377.htm>

FDA Posts Updated FAQ on Foreign Inspections and In-House Labs Under FSMA

The Food and Drug Administration (FDA) updated its frequently asked questions document on the Food Safety Modernization Act (FSMA), which became law on 01/04/11. The updated FAQs adds information on foreign inspections and fees, mandatory recall authority, administrative detention, identification of "high risk" foods, accreditation of in-house labs, and World Trade Organization notification.

FDA notice:

<http://www.fda.gov/Food/FoodSafety/FSMA/ucm247559.htm>

EPA Posts Information On Over 150 Chemicals in Consumer Products That May Be Harmful

The Environmental Protection Agency (EPA) recently posted more than 150 chemicals in 104 health and safety studies that had been claimed confidential by industry. This means that the identities of these chemicals will no longer be redacted, or kept from view. According to EPA, the chemicals involved in these studies are used in dispersant formulations and consumer products such as air fresheners, non-stick and stain resistant materials, fire resistant materials, nonylphenol compounds, perfluorinated compounds, and lead. The health and safety studies include some chemicals declassified by EPA as well as voluntary declassifications by companies. EPA also launched a new chemical data access tool that gives the public the ability to electronically search EPA's database of more than 10,000 health and safety documents on a wide range of chemicals. EPA notice:

<http://yosemite.epa.gov/opa/admpress.nsf/eeffe922a687433c85257359003f5340/9f7964fcbca3824a852578a900574cea!OpenDocument>

USITC Issues Final Report on Proposed Changes for 2012 HTS

The International Trade Commission (ITC) issued its final report in connection with its investigation of proposed 2012 WCO-recommended modifications to the Harmonized Tariff Schedule (HTS) of the U.S., pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. The HTS changes in this report will reflect World Customs Organization (WCO) updates and clarifications to the international Harmonized System (HS). The recommendations represent the 5th set of changes in the WCO's long-term program to periodically review the HS nomenclature structure. The WCO's HS recommendations are scheduled to become effective on 01/01/12. The U.S. will try to implement its HTS changes on that same date, by proclamation; however, ITC notes that there could be a delay, as such HTS modifications can take effect no sooner than 30 days after the proclamation is published in the Federal Register. According to the ITC report, the recommended HTS changes that will result from this review cycle are intended to ensure substantial rate neutrality (i.e. continue existing duty treatment). As well as the U.S. Customs and Border Protection (CBP) and other federal agencies may have identified conforming HTS changes (additional tariff lines, etc.) needed for this goal. The final report contains 204 HTS amendments in 54 chapters, affecting 108 different headings. ITC reports these changes are intended to update the nomenclature or clarify the classification of particular goods. As reported, the largest volume of such amendments arose from a single request by the Food and Agriculture Organization (FAO) for separate identification of food products in chapters 1 through 21. In addition, a number of amendments arose from a U.S. proposal to create a new heading 9619 to cover sanitary goods, such as diapers, tampons, and the like. The ITC also states that also of particular economic and technological importance are new amendments providing for separate identification in the HS for biodiesel fuels, nickel-metal hydride batteries (used in hybrid motor vehicles), and lithium-ion batteries (used to power consumer electronics products). ITC notice:

http://www.usitc.gov/tariff_affairs/hts_docum

CBP Bulletin 5/25/11 - Mexican Raw Sugar/Pants/Shorts/Textile Belts/Vodka and Dynabeads

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 45, No. 22); CBP published four notices that propose to modify rulings regarding NAFTA eligibility of refined sugar, preferential treatment of certain garments with belts as composite goods, and the tariff classification of vodka and of Diasorin Dynabeads. This notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP cautions that an importer's failure to advise CBP of such rulings, decisions, or substantially identical transactions may raise issues of reasonable care on the part of the importer or its agent.

Mexican Raw Sugar Refined in Canada - The Mexican raw sugar is processed at sugar refining facilities located in Canada. The polarity of the sugar is said to be 99.9 degrees and will be packaged in 50 pounds bags and/or 1 metric ton tote bags. CBP advises that the refined sugar is not wholly produced or obtained in Mexico; but rather in the territory of Canada and Mexico. The country of origin of the refined sugar is Mexico, as the Mexican raw sugar imparts its essential character to the good. The imported refined sugar would be considered an originating good under the North American Free Trade Agreement (NAFTA).

- Current: Refined sugar wholly obtained or produced entirely in the territory of Mexico
- Proposed: Refined sugar wholly obtained or produced entirely in the territory of Canada and Mexico
- Proposed for modification: NY N065187, NY N025726
- Proposed new rulings: HQ H131644, HQ H131645

Senate Commerce Committee Votes Favorably on Seafood Safety Bill

The Senate Committee on Commerce, Science, and Transportation ordered favorably reported S. 50, a bill to strengthen Federal consumer product safety programs and activities with respect to commercially-marketed seafood by directing the Secretary of Commerce to coordinate with the Federal Trade Commission (FTC) and other appropriate Federal agencies to strengthen and coordinate those programs and activities. According to a Congressional Research Service (CRS) summary, S. 50 would:

- Authorize: the refusal of admission of imported seafood or seafood products originating from a country or exporter if such seafood does not meet federal requirements, and increased inspection of shipments of seafood from countries that do not meet federal requirements and that lack adequate certified laboratories. Direct the Secretary to increase the number of laboratories certified to Food and Drug Administration (FDA) standards in the United States and in countries that export seafood to the U.S. to analyze food and ensure that the laboratories comply with applicable federal laws.
- Authorize the Secretary of Commerce to increase the number and capacity of laboratories operated by National Oceanic and Atmospheric Administration (NOAA) involved in testing and other activities under this Act as necessary to carry out the provisions of this Act and as provided for in appropriations Acts.
- Direct the Secretary to strengthen federal activities for ensuring that commercially distributed seafood meets federal food quality and safety requirements.

(Continued above)

- Direct the Secretary and other appropriate federal agencies to enter into agreements to strengthen interagency cooperation on seafood safety, labeling, and fraud, including regarding examining and testing seafood imports, inspections of foreign facilities, establishing a distribution chain tracking system, data sharing, and public outreach.
- Require the NOAA to report deceptive seafood marketing and fraud to the FTC.

S.50: <http://thomas.loc.gov/cgi-bin/query/B?r112%3A%40FIELD%28FLD003%2Bd%29%2B%40FIELD%28DDATE%2B20110608%29>