



EIB World Trade Headlines

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Fax: (978) 250-4529 • P.O. Box 4008, Chelmsford, MA 01824

March 2013 - Volume 5, Issue 4

Stop, Look, Listen... Cyber Attacks

Evolutions in Business benefits from meetings and bulletins provided by the Boston Office of the FBI's Counter Intelligence Partnership. The most recent bulletin provides information about Cyber Attacks. We are receiving this bulletin because I or someone from our organization attended a threat briefing, symposium or coordination meeting with the FBI Boston Division and were added to their partner distribution list.

I am allowed to share it with my community of customers only. I will gladly share it with your IT professionals as long as they give me their name and email, which we will maintain on a log in our secure files.

The U.S. Government (USG) is committed to working with the private sector to better protect critical networks from persistent malicious actors. Therefore, the USG is providing a new Joint Indicators Bulletin (JIB), recently released, to facilitate working together with the community in mitigating the threat of cyber attacks.

In this list you will find a new JIB addressing malicious cyber attacks and the risks it poses to your intellectual property, trade secrets, and other sensitive business information. Recipients are encouraged to distribute the JIB to any individuals and/or organizations with your network who could benefit from this message.

Please email me or call for Attachment A, the machine-readable format for the cyber attack indicators listed in the JIB. If you have any questions, comments, and/or detect any cyber intrusions, please contact your FBI liaison or local FBI office.

Thank you very much for your partnership as we combat this National Security matter.

NEWSLETTER NOTE

*Stop, Look, Listen...

*ECHA Posts 2012 REACH Report, Updated Chemical Information Database Manual

*Pakistan Policy Update-

*Ocean Port Labor Update

*FDA Issues FR Notice on Draft Guidance for Latex-Free Claims in Medical Product Labeling

*DDTC Posts Updated Instructions for Direct Commercial Sales to Libya

*FDA issues guidance on Food

*SPECIAL SECTION

Direct Commercial Sales Exports to Libya

Libya is a country subject to a United Nations Security Council (UNSC) arms Embargo as identified in §126.1(k) of the International Traffic in Arms Regulations (ITAR). It is the policy of the United States that all requests for the export of defense articles and services will be reviewed on a case by case basis with consideration be given to the following:

- (1)** Arms and related materiel of all types, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities and notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification;
- (2)** Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification; or
- (3)** Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee.

License applications submitted pursuant to these exceptions must provide specific justification on how the proposed export meets the UNSC criteria. License applications to support marketing of defense articles that require prior UN notification must include a letter of request from the Libyan government attesting to the end-use consistent with **(2)** above.

License applications without this may be returned without action. General correspondence requests and technical data licenses are not subject to prior UN notification which would only take place with the export of hardware or defense services.

(Continued above)

Applicants are Reminded to note the requirements in 126.1(e) of the ITAR to obtain the prior written approval of this office before any proposals for the sale of defense articles or services may be made to Libya. This may be satisfied by a general correspondence/letter request or DSP-5 marketing license.

License applications submitted pursuant to these exceptions are notified, after the completion of the normal review process, to the Committee of the Security Council concerning Libya, and are eligible for approval in the absence of a negative decision by the Committee within five working days of such a notification. This process can be time consuming and the exporter should plan accordingly, see the web notice "Direct Commercial Sales, Notification to the United Nations Security Council" for additional information.

History

On February 26, 2011, the UNSC adopted Resolution 1970, paragraph 9 of which provides that UN member states shall immediately take the necessary measures to prevent the sale, supply, or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UNSC adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya.

On May 24, 2011, the Department amended the ITAR to implement the UNSC's actions by adding Libya to ITAR §126.1(c), which identifies countries subject to UNSC arms embargoes. See 76 FR 30001. The Department also revised the previous policy on Libya contained in ITAR §126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

On September 16, 2011, the UNSC adopted Resolution 2009, which modified the arms embargo against Libya put in place by the adoption of resolutions 1970 and 1973.

On November 4, 2011, the Department amended the ITAR to reflect the arms embargo policy of Resolution 2009, which is the policy currently in effect.

- Notice to Exporters - Pakistan Policy Update (February 15, 2013)

Section 203 of the Enhanced Partnership with Pakistan Act of 2009 (Public Law 111-73) prohibits for fiscal years 2012-2014 the issuance of export licenses for major defense equipment (defined in 22 U.S.C. 2794(6)) to be exported to Pakistan absent an appropriate certification or waiver under Section 203 in the fiscal year.

On February 15, 2013, Deputy Secretary Thomas Nides signed a waiver of these prohibitions for the current fiscal year. DDTC is now reviewing all license applications for the export to Pakistan of defense articles, including major defense equipment, on a case-by-case basis.

Ocean Port Labor Update

*ILA and USMX still negotiating on local issues. Deadline right now is 3/8/13 unless extended again.

*New York Shipping Association warns of major delays at terminals if CBP inspections are delayed due to Sequestration.

Census Posts Information on AES Compliance Seminars beginning March 2013

The Census Bureau and Association of Small Business Development Centers are hosting an Automated Export System (AES) Compliance Seminar in Houston, Texas on March 13-14.

Census Bureau experts will cover Foreign Trade Regulations (FTR) filing requirements, commodity classification in Schedule B and AES. The second day will feature a AESPcLink Workshop.

Workshop information:

<http://www.census.gov/foreign-trade/aes/meetingsandpresentations/exportcompliance-houston-20130313.pdf>

ECHA Posts 2012 REACH Report, Updated Chemical Information Database Manual

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

*The European chemical Agency (ECHA) has issued its Registration, Evaluation, Authorization, and restriction of Chemicals (REACH) report for 2012. The report shows that a large part of the examined registration dossiers still raise quality and subsequently compliance concerns. Only about a third of the 354 compliance checks during 2012 did not require a follow-up request for information by ECHA. The report outlines specific recommendations for registrants filing future dossiers.

http://echa.europa.eu/view-article/-/journal_content/title/reach-evaluation-report-2012-quality-information-required-for-reach-compliance.

*International Uniform Chemical Information Database (IUCLID) Manual has been updated by ECHA. The manual includes instructions on how registrants can explicitly report when a nanof orm has been used in (experimental) studies. It will help registrants to prepare or update registration dossiers for substances that are nanomaterials or include nanof orms. There is also a specific section for classification and labeling.

http://echa.europa.eu/view-article/-/journal_content/title/the-iuclid-user-manual-for-nanomaterials-has-been-updated



Senators Introduce Transportation Investment Fund Bill

Sen. Jay Rockefeller, D-W. Va., and Sen. Frank Lautenberg, D-N.J. recently introduced a bill that would leverage federal dollars to improve America's transportation infrastructure, creating a \$5 billion fund to encourage private investment in transportation projects. As reported, the bill would use loans, loan guarantees and other tools to help fund eligible transportation projects. Those include everything from rail lines and marine ports to highways and public transportation, according to a release about the bill.

The bill also proposes a \$600 billion National Infrastructure Investment Grant program within the Department of Transportation. In a release, Lautenberg announced the bill would spur economic development and create a new way to increase investment in projects to expand rail capacity, like the Gateway Tunnel, as well as projects to "modernize our ports and other infrastructure to meet the growing demands of the 21st Century."

Full text of the bill:

http://commerce.senate.gov/public/?a=Files.Serve&File_id=49970eb9-5b6b-4d12-be42-c979136a1f79

Press release:

http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=534de0ba-d51b-447b-990c-19af7e777368&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=4b968841-f3e8-49da-a529-7b18e3

EU Proposing to Help Least Developed Countries with Trade Facilitation

Recently reported, the EU wants to help least-developed countries (LDCs) make the most from a global trade facilitation agreement that could be approved at the Dec. 3-6 WTO Ministerial Conference in Bali. According to the European Commission, trade facilitation refers to measures aimed at simplifying, modernizing and harmonizing merchandise import, tax collection at the border, and export and transit procedures, particularly customs requirements. Possible actions may include simplifying rules, cutting down the number of and standardizing custom forms and computerization.

EU support for the trade facilitation pact responds to demands from LDCs for help in deriving the most benefit from the deal. The EC notes the cost of implementing trade facilitation reforms is relatively modest. World Bank estimates placed country costs at \$3-\$11 million, the OECD \$3.5-\$19.7 million.

EU press

release: http://europa.eu/rapid/press-release_IP-13-211_en.htm?locale=en



DID
SOMEONE
SAY
SPRING...
.....?

-CBP Bulletin February 27, 2013-

Aluminum Powder, Bitrex Compound

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 47, No. 10); CBP is:

*revoking a ruling on the classification of aluminum powder; and

*revoking a ruling on the classification of a compound made with 25 percent Bitrex, "the bitterest compound known."

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. According to CBP, consideration will be given to any written comments received by 03/29/13 before taking this action.

Aluminum Powder Bitrex - Wetted Spherical Aluminum Powder. A lumpy gray powder composed of aluminum, other base metals, and a non-aromatic organic solvent used as a wetting agent. It can be used for paints as a metallic pigment, rocket fuel, electronics and solar panels. According to CBP, the instant product consists of more than 80% aluminum and is therefore to be classified as an alloy of aluminum, as the aluminum gives the product its essential character.

- *Current: 3824.90.9290, 5%
- *Proposed: 7603.10.00, 5%
- *Proposed for revocation: NY N117455 (2010)
- *Proposed new ruling: HQ H161855

Bitrex - Bitrex, 25% in Propylene Glycol. Bitrex is the brand name for denatonium benzoate, an aromatic, cyclic amide indicated for use as a denaturant and bittering agent. The solution has 25% Bitrex and 75% propylene glycol, also a chemical compound. CBP advises the Bitrix solution contains 25% denatonium benzoate in 75% propylene glycol. Therefore, the solution contains more than 5% of an aromatic substance.

- *Current: 3824.90.9190, 5%
- *Proposed: 3824.90.28, 6.5%
- *Proposed for modification: NY L85332 (2005), HQ 968018 (2006)
- *Proposed new ruling: HQ H072379

CBP Bulletin
(02/27/13)http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2013/vol47_02272013_no10/vol_47_no_10_title.ctt/vol_47_no_10_title.pdf

The National Customs Brokers
and Forwarders Association of
America, Inc.

www.ncbfaa.org

On March 1, CBP initiated the second of what will be weekly conference calls with NCBFAA leadership and other trade organizations. Soon to be available will be guidance to the private sector on the CBP website, delivering the news on how these massive government budget cuts will affect its operations.

Of immediate consequence will be deep cuts in overtime, which can be instituted without delay. Linked to their overtime cuts was their statement about security measures: Radiation Portal Monitors will continue in full force but, without overtime, will likely be a source of delays at the port.

While it appears that there will be no furloughs at FDA, APHIS or CPSC, CBP assured the private sector audience that there would be 12-14 day furloughs at Customs, beginning approximately on April 7. As is commonly known, there is a 30-day notification period that prevents them from instituting furloughs immediately. Cuts will be taken across-the-board, CBP said, so that no single port would offer an escape from delay through diverting cargo to another port.

As in last week's report, they emphasize the need to work closely with your local port(s) to stay apprised of operational developments.

Solutions suggested by CBP are to pre-file data as soon as possible, especially for those participating in trusted trader programs. On a related matter, CBP said that it would honor its commitment to those engaged in "partnership programs" such as C-TPAT, ISA or ACAS -- they will continue to get "preferential processing."

(Continued below)

On the Office of International Trade side of CBP, the private sector was advised to expect delays for rulings, audits, ISA applications and the like. OIT advised that brokers should expect no major change in processing through ACE and ACS; however, availability of client representatives will be impacted. Further, with regard to ACE development, there will be "fewer resources for ACE," which may mean expanding the three-year schedule for completion and decreasing the scope of what has been promised.

Note however that much of the foregoing is CBP's extrapolation of DHS Secretary Napolitano's statement on the department's website. Decisions are not final and represent CBP's best efforts in forecasting the effects of these budget cuts.

Commerce Posts Export Stats by State (29 Set Record)

The U.S. Commerce Department (DOC) recently released data showing that 29 states set new records for export sales in 2012. As reported, in total, 35 states achieved merchandise export growth in 2012, and 20 of those states experienced growth of at least 5 percent or more. DOC reports total merchandise exports from all 50 states helped contribute to the record-setting value of goods and services exports in 2012, which reached \$2.2 trillion. Nationally, jobs supported by exports increased to 9.8 million in 2012, up 1.3 million since 2009.

U.S. Deputy Commerce Secretary Rebecca Blank announced, "The increase in state exports in 2012 demonstrates that U.S. businesses are carving out a new global market share for their innovative products and services, despite facing economic headwinds worldwide." Eleven states achieved double-digit export growth in 2012 compared to 2011.

They include New Mexico (+42 percent), Arkansas (+36 percent), Nevada (+28 percent), North Dakota (+26 percent), West Virginia (+26 percent), Washington (+17 percent), Wyoming (+17 percent), Louisiana (+15 percent), Michigan (+12 percent), Colorado (+11 percent), and Kentucky (+10 percent.)

(Continued above)

"These 11 states provided an extra boost to United States exports, with states such as New Mexico ramping up its export sales to its largest market, Israel, by 193 percent. Arkansas increased exports to its fourth leading market, France, by 117 percent.

Colorado also boasted a 63 percent leap in exports to Brazil, as well as 20 percent growth in exports to Turkey. Exports from West Virginia to South Korea increased 61 percent," Commerce reported. Nationwide, 2012 U.S. merchandise exports to countries with which the United States has a trade agreement outpaced other markets nearly two to one.

This included exports to Oman (+22 percent), Panama (+20 percent), Costa Rica (+19 percent), Chile (+18 percent), Jordan (+18 percent), Colombia (+14 percent), Australia (+13 percent), Peru (+12 percent), and Mexico (+9 percent).

Further information about individual state contributions to national exports is available through the International Trade Administration's Office of Trade and Industry Information Website.

<http://www.trade.gov/mas/ian/statereports/>

Commerce Issues FR Notice on Secretary's Trade Mission to Latin America

The International Trade Administration (ITA) announced Commerce Secretary will lead a May 2013 trade mission to Sao Paulo and Brasilia, Brazil; Bogota, Colombia; and Panama City, Panama for export-ready firms in the infrastructure industries, including engineering, transportation, energy, and safety and security. The mission will include government and business-to-business meetings, market briefings, and networking events.

Up to 20-25 companies will be selected to participate. The ITA will begin to review applications immediately.

ITA FR
Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-05508.pdf>

Ocean Port Labor Update

- * Promising News this week
- * The Local ILA in Ports of New York/New Jersey reached tentative deal with New York Shippers Association (employers) on local issues
- * The Wage Scale Delegates of ILA approved, in principal, the proposed Master Contract with USMX
- * ILA hopes to set a date soon for union member ratification of the master and local contracts
- * Keep in mind that the members of the Clerical Union of the ILWU voted down the proposed contract. They could have struck the Ports of LA/LB but continued talks until contract was ratified by the members
- * The key is the ILA needs its members to ratify both the master and the local contracts to avoid any possible labor disruptions

CBP Issues Message that CBP Will Do Bonded Facility Employee Background Checks

U.S. Customs and Border Protection (CBP) will now handle the background checks of bonded facility employees, previously performed by Immigration and Customs Enforcement (ICE) Homeland Security Investigations. In a CSMS message, CBP will use the Trusted Worker Module and Global Enrollment System for the vetting, allowing a "more informed decision in approving an application." CBP will be requiring background information to be submitted from facility officers, principals and those individuals with access to facility recordkeeping. The information submitted will be done on a one-time only basis and submission of fingerprints will be done on an as-needed basis.

CBP notice:

http://apps.cbp.gov/csms/viewmssg.asp?Recid=19235&page=&srch_argv=&srctype=&btype=&sortBy=&sby

Court Rules Against ITA in China Wood Bedroom Furniture AD Scope Decision

The Court of International Trade (CIT) sustained the International Trade Administration's (ITAs) reversal of a scope ruling for the antidumping (AD) duty order on wooden bedroom furniture from China, after remanding twice on the ITA's treatment of Legacy Classic Furniture's product. Originally, the ITA had found the combination bench/storage unit in scope based on the scope's explicit inclusion of chests, but CIT in its second remand said the product is clearly an excluded bench, which outweighs its arguable inclusion as a chest.

In light of the court's findings, the ITA found the "Heritage Court Bench" out of the scope of the AD duty order. The ITA also gave a short explanation of its policy when scope inclusions and exclusions are in conflict with regard to a product. The ITA explains on its policy when the language of the scope is in conflict regarding a product, the ITA "follows the general principle that the provisions with more specific language, whether used to define the subject merchandise or to define an exclusion from the subject merchandise, control the Department's scope clarifications.

The Department's policy is to decide such questions on a case-by-case basis, depending on the language of the order, the criteria in 19 CFR 351.225, and the facts on the record before us in each case."

CIT

Case:http://www.cit.uscourts.gov/SlipOpinions/Slip_op13/13-28.pdf

(Legacy Classic Furniture, Inc. v. United States, Slip Op. 13-28, 03/06/13, Judge Carman)



FDA Issues FR Notice on Draft Guidance for Latex-Free Claims in Medical Product Labeling

The Food and Drug Administration (FDA) announced the availability of a draft guidance on medical product labeling related to latex content. According to FDA, it issued the guidance because manufacturers have included terms like "latex-free" or "does not contain latex" on medical product labeling, but such statements are not specific enough, not scientifically accurate, and should not be included in medical product labeling. The agency reports the guidance recommends accurate labeling that can be used by manufacturers that which to convey no natural rubber was used in a product. Comments on the guidance are due by 06/10/13

FDA FR Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-05554.pdf>

FDA Issues FR Notice on Updated Guidance for Administrative Detentions of Food

The Food and Drug Administration (FDA) posted guidance on administrative detention of food. The FDA updated a previous guidance to make it consistent with a recent final rule on administrative detention regulations. Under the final rule, FDA can order administrative detention if there is reason to believe that an article of food is adulterated or misbranded. Decisions on whether FDA has a "reason to believe" a food is adulterated or misbranded are made on a case-by-case basis. The reason being such decisions are fact specific.

FDA guidance: <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodDefenseandEmergencyResponse/ucm342588.htm?source=govdelivery>

FDA FR Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-08/pdf/2013-05470.pdf>

USTR Issues Information on Liberalization of Egypt Qualifying Industrial Zones

U.S. Trade Representative (USTR) Ron Kirk recently liberalized the designation of existing Qualifying Industrial Zones (QIZs) in Egypt, making all production facilities in the zones potentially eligible to export goods duty-free to the U.S. The six QIZs are Greater Cairo, Alexandria, the Suez Canal, the Central Delta, the Beni Suief and the Al Minya zones. A USTR press release notes the move will "increase opportunities for trade, investment and production" in those areas. USTR advises Congress authorized the President to designate QIZs in 1996. The zones allow Egypt or Jordan to export products to the U.S. duty-free, as long as these products contain inputs from Israel.

USTR notice: <http://www.ustr.gov/about-us/press-office/press-releases/2013/march/USTR-Kirk-new-QIZ-opps>

ITA Issues FR Notices on Several Trade Missions

The International Trade Administration (ITA) is accepting applications for a trade mission to Bogotá, Colombia, for U.S. companies to increase exports to the country. The mission – open to all U.S. companies with growing potential in Colombia – will feature meetings with Colombian businesses, government officials, industry representatives, as well as U.S. embassy market briefings. Applications for the mission, which will take place Sept. 9-12, can be submitted to the Department of Commerce from now through 06/07/13.

ITA FR Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-05507.pdf>

ITA Planning Civil Nuclear Sector Trade Mission to China and Vietnam in May 2013

The International Trade Administration (ITA) will lead a trade policy mission to Hanoi, Vietnam and Beijing and Sandmen, China May 16-23 for the civil nuclear sector. The mission will connect U.S. companies with key contacts in the target markets, and promote U.S. market access in the two countries. Participants will have the option of observing the Association of South East Asian Nations energy cooperation workshop on May 15. Recruitment for the mission will begin immediately and conclude by April 15. The ITA will review applications and make selection decisions on a rolling basis beginning 04/20/13.

ITA FR Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-05521.pdf>

FTZ Board Posts Presentations on Best Practices, etc.

The Foreign Trade Zones Board (FTZB) posted presentations on grantee responsibilities and best practices, and zone schedules and public utility, on the grantee section of its website.

Presentation on responsibilities and best practices: <http://1.usa.gov/WEr5Fd>
Presentation on zone schedules: <http://1.usa.gov/105QFTj>

FTZB notice: <http://ia.ita.doc.gov/ftzpage/grantee.html>

FAA Predicts Steady Increase in International Air Cargo

A Federal Aviation Administration (FAA) report projected revenue ton-miles (RTMs) to grow 5.7 percent. FAA advises the forecasts for international cargo RTMs are based on growth in world gross domestic product (GDP), adjusted for inflation. While International cargo RTMs unexpectedly fell 3.6 percent in 2012 "as fallout from the European debt crisis and a slowdown in China's economic growth slowed worldwide trade," they are projected to grow 1.1 percent in 2013 as global trade growth resumes.

The agency reports international cargo RTMs are forecast to increase an average of 5.7 percent a year from 2013-2033. Share of international cargo RTMs flown by all-cargo carriers increased from 49.3 percent in 2000 to 74.7 percent in 2012. Continuing the trend, the all-cargo share of international RTMs flown is expected to increase to 81 percent by 2033, the FAA posted.

FAA report: http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/2013-2033/media/2013_Forecast.pdf

OMB Posts Report to Congress on Specifics of Budget Cuts under Sequestration

According to a recent White House report, U.S. Customs and Border Protection (CBP) should plan to pare back \$512 million from its FY 2013 budget. The Office of Management and Budget (OMB) detailed exactly how the \$85 billion in cuts would affect federal agencies following the president's release of the sequestration order 03/01/13.

The report says several agencies that oversee trade issues should expect to reduce their 2013 fiscal year expenditures by 5 percent. OMB commented the cuts will be "deeply destructive" to national security, domestic investments, and core government functions. OMB Deputy Director for Management Jeffrey Zients in a letter noted.

(Continued below)

"The Joint Committee sequestration is a blunt and indiscriminate instrument. It was never intended to be implemented and does not represent a responsible way for our nation to achieve deficit reduction," Zients wrote. "The administration continues to stand ready to work with the Congress to enact balanced deficit reduction legislation that replaces sequestration and puts the nation on a sound long-term fiscal path."

As reported, the 5 percent cuts, mandated by the Budget Control Act of 2011 and incorporating several changes made by the American Taxpayer Relief Act of 2012, equate to nearly 9 percent cuts for all non-exempt, non-defense programs because they must be achieved over 7 months rather than 12. Sequestration must be applied equally at the program, project, and activity level, but need not be applied equally to each type of budgetary resource within a budget account.

The report notes the cuts will place many federal employees in administrative furlough, which may not begin until April due to a policy that requires agencies to bargain with federal unions at least 30 days prior to implementing any furloughs. Each agency has discretion to decide which employees will be furloughed. According to the report, CBP will see a 5 percent cut, or \$512 million from its \$10.2 billion budget. Agency programs suspected to see cuts as a result include:

- * automation modernization (\$17 million);
- * payments to wool manufacturers (\$1 million), and
- * refunds and operations in Puerto Rico (\$5 million)

As reported, U.S. Immigration and Customs Enforcement (ICE) will see cuts of \$294 million. The International Trade Commission (ITC) will see a \$4 million cut, while the International Trade Administration's (ITAs) budget for operations and administration will be cut by \$23 million. The sequestration will cut \$1 million from the Court of International Trade's (CITs) salaries and expenses and the U.S. Trade Representative's (USTRs) Office will lose \$3 million. The Food and Drug Administration (FDA) will see a \$209 million cut to salaries and expenses. At the Consumer Product Safety Commission (CPSC), salaries and expenses will be cut by \$6 million. Finally, at the Department of Agriculture salaries and expenses will be cut by \$56 million at the Animal and Plant Health Inspection Service (APHIS), and \$53 million at the Food Safety and Inspection Service (FSIS).

OMB Report:

http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjsequestrationreport.pdf

DDTC Posts Updated Instructions for Direct Commercial Sales to Libya

The State Department's Directorate of Defense Trade Controls (DDTC) posted license instructions for direct commercial sales to Libya on 03/04/13. The notice says Libya is subject to a UN Security Council arms embargo, identified in the International Traffic in Arms Regulations (ITAR), and that requests for the export of defense articles and services will be reviewed on a case-by-case basis. DDTC notes consideration will be given to the following:

*Arms and related materiel of all types, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities and notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification.

*Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification.

*Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee.

License applications must provide specific justification on how the proposed export meets this criteria. Applications to support marketing of defense articles requiring prior UN notification must include a letter of request from the Libyan government attesting to the end-use consistent with the second point.

DDTC notice:

http://www.pmdtdtc.state.gov/embargoed_countries/documents/Libya_DirectCommercialSales.pdf

PHMSA Issues Final Rule Amending Hazmat Regulations

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a final rule amending the Hazardous Materials (Hazmat) Regulations to clarify and relax provisions related to marking of packaging, record retention, treatment of certain materials, and location of the dangerous cargo manifest on vessels in U.S. ports. The changes are effective 05/06/13. The final rule includes:

***Manufacturer and lab marks.** The rule revises 49 CFR 178.3 to explicitly say that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory.

***Retester recordkeeping.** PHMSA is amending the record retention requirements for packaging test reports and provide a chart to clearly identify the recordkeeping requirements.

***Remove gasohol listing.** The final rule amends the Hazardous Materials Table by removing the listing for "NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol"; and removing reference to gasohol. PHMSA said these removals harmonize the regulations with international standards.

***Self-reactive materials.** PHMSA will provide a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F.

***Smokeless powder.** PHMSA's final rule will allow smokeless powder classed as a Division 1.4C material to be reclassified as a Division 4.1 material to "relax the regulatory requirements for these materials without compromising safety."

***Dangerous cargo manifest.** The final rule allows the dangerous cargo manifest (DCM) to be in locations designated by the master of the vessel besides "on or near the vessel's bridge" while the vessel is in a U.S. port. This change will ensure that the DCM is readily available to communicate to emergency responders and enforcement personnel the presence and nature of the hazardous materials on board a vessel.

PHMSA FR Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-07/pdf/2013-04197.pdf>

-CBP Bulletin 2/27/13 - Insulating Materials, Polyethylene, Toy Blocks, Dry Suits, Reagent Kits

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 47, No. 10); CBP is:

*revoking a ruling on the tariff classification of insulating mineral materials;

*revoking a ruling on the tariff classification of polyethylene;

*revoking a ruling on the country of origin marking of toy blocks;

*modifying a ruling on the classification of dry suits; and

*modifying a ruling on the classification of reagent kits.

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.

Insulating Materials

An article of insulating mineral materials used in a gas turbine engine to protect the rear turbine support hub from excessive heat produced by the turbine. Ceramic fiber (mineral wool) pads encapsulated in one-inch woven textile squares covered with an outer cladding of stainless steel.

According to CBP, laboratory analysis of the article reveals that the mineral insulating fibers (mineral wool) predominate in the article, and the mineral insulating fibers are indispensable to the primary use and purpose of the article, which is to protect a rear turbine support hub from excessive heat produced by the turbine.

(Continued below)

The previous classification requires that the mineral wool be imported in bulk, sheets, or rolls. CBP now finds article is in the shape of a ring with a large hole in its middle and thus can't be described as a "sheet."

*Old HTS/Rate: 6806.10.10, 3.9%

*New HTS/Rate: 6806.90.00, Free

*New Ruling: HQ H146056 (dated 01/16/13), revokes NY N125656 (2010)

Ultralube D-806

A linear low -density polyethylene, consisting of a mixture of 50% linear low density Polyethylene, 40% Water, 6% Oxidized Polyethylene, 4% Ethoxylated alcohols. It's described by the manufacturer as being used as a polish, straight out of the container, by Chinese leather manufacturers who use the material for the Bianchini effect of toning (a whitening effect) the look of the leather and for soft feel properties. CBP previously described the product as a wax additive used in aqueous coatings such as water based printing inks to improve the surface qualities of the coating, ink and lacquers.

As reported, Keim-Additec Surface challenged the description saying it was better described as a "polish." CBP disagreed, saying "the product is sold in large volumes (120 kg drums and 1000 kg intermediate bulk containers), which, along with statements in the product data sheets, show that the product is added directly to the formulation of other products during a manufacturing process, rather than used straight out of the container as a leather polish, as you suggest." However, CBP did change the classification based on viscosity calculations using a Material Safety Data Sheet (MSDS) submitted by Keim-Additec, finding a relative viscosity over 1.44.

*Old HTS/Rate: 3901.10.5010, 6.5%

*New HTS/Rate: 3901.20.10, 6.5%

*New Ruling: HQ H080820 (dated 01/16/13), revokes NY N063739 (2009)

(Continued above)

Children's Toy Blocks

Mega Brands Children's toy blocks. The toy blocks are packaged in two different cardboard box containers, which are sold at retail in their imported form. On the back of one of the boxes is the following: "©2009, MEGA Brands Inc.® & ™ MEGA Brands Inc. EN This toy conforms to: ASTM F963-08 U.S., Canadian Hazardous Products Act CEN Standards E.N. 71. Products and colors may vary"; "Keep this information."; and "Most models can be built one at a time." In addition, the phrase "Keep this information" (in English and several other languages) is enclosed in a rectangular box with thin black borders and has the letters "CE" in a large stylized font next to the words "MEGA Brands Europe NV" with the Belgium address of Mega Brands underneath it.

CBP previously ruled that the packaging in which imported children's toy blocks are sold to the ultimate purchasers is required to be marked with the country of origin on the back of the box near the address listed for the importer's European headquarters because a U.S. consumer would not conclude the stated purpose and function of the foreign references based on this wording, thus triggering special marking requirements in 19 CFR 134.46.

However, CBP now finds that the merchandise does not need to be marked with the country of origin on the back of the box because the information provided on the box doesn't give any hint to the country of origin for the toy blocks inside the box.

*Old Origin Marking: The phrase "Components Made in Canada and China" should appear, near and in similar size to the Belgium address and the reference to Europe in order to satisfy the marking requirements.

*New Origin Marking: No additional country of origin marking required.

*Proposed Ruling: HQ H147197 (revokes NY N132564 (2010))

(Continued below)

Dry Suits

A unisex coverall garment designed for over-water and waterborne tactical operation teams. Garments are made of several components, which are cut, sewn, and assembled into a finished garment in Canada. CBP determined that this product was not eligible for NAFTA preferential treatment, because it did not satisfy the required tariff shift.

CBP found an outside plastic layer is in fact visible to the naked eye through the knit polyester layer. That layer was previously excluded from the classification because it couldn't be seen with the naked eye. Because the outer shell fabric is a plastic laminated textile fabric, in which the plastic layer is visible to the naked eye, it is properly classified under heading 5903.

The product now meets the requirements of NAFTA preferential treatment because the outer layer, now considered to be classified under heading 5903, shifts from 5903 to heading 6210, as required under General Note 12(t)/62.

*Current: 6211.43.0010, 16% - Not eligible for NAFTA preferential treatment.

*Proposed: 6210.50.50, 7.1% - Eligible for NAFTA preferential treatment.

*Proposed for modification: NY N068477 (2009)

*Proposed new ruling: HQ H073928

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Reagent Kits

Reagent Kit IM 1579 RIA Free T3, This kit contains Ligand coated tubes and is radioactive labeled monoclonal antibody in bovine serum albumin and dye. It is used for the quantitative determination of triiodothyronine (T3) in human serum by the principle of the competitive protein binding analysis.

According to CBP, the I-labeled monoclonal antibody, which gives the kit the essential character, was misclassified. The antibody is contained in a dispersion of bovine serum albumin, sodium azide and a dye having a specific radioactivity exceeding 74 becquerels per gram, which meets the terms of Chapter 28 note 6(d).

*Current: 3002.10.01, Free

*Proposed: 2844.40.00, Free

*Proposed for modification: NY N019762 (2010)

*Proposed new ruling: HQ H035574

CBP Bulletin (02/27/13)
http://www.cbp.gov/linkhandler/cgov/trade/leg al/bulletins_decisions/bulletins_2013/vol47_02_272013_no10/vol_47_no_10_title.ctt/vol_47_n o_10_title.pdf

SPECIAL SECTION



SEC Speaks 2013 Recap - FCPA

Enforcement Division Highlights Need for Strong Compliance Programs and Continued Efforts to Expand FCPA Investigations

Drinker, Biddle & Reath, LLP
www.drinkerbiddle.com

The United States Securities and Exchange Commission held its annual "SEC Speaks" conference in Washington, D.C. on February 22-23, 2013. Senior officials recapped its recent successes and highlighted a number of priorities for the upcoming year. Acting Director George Canellos led a panel of senior officials from the Division of Enforcement, who outlined expected enforcement efforts in a broad range of areas, including traditional fraud, FCPA violations, insider trading, and other instances of market abuse.

AD Canellos noted that the Division intends to use its broad enforcement authorities to seek more "conduct specific" injunctions rather than "obey the law" orders, and utilize its new authority under Dodd-Frank to obtain stiff civil penalties in "cease-and-desist" proceedings. In light of the promise of more aggressive enforcement, AD Canellos and other members of the Enforcement panel repeatedly emphasized the need for strong compliance programs. A number of panel members explained that the Division of Enforcement would key on the "gatekeepers" – accountants, boards of directors, and supervisory personnel.

In a workshop session following the main panel discussion, Kara Brockmeyer, Chief of the FCPA Unit, re-emphasized the need for strong compliance programs to avoid exposure under the FCPA. Ms. Brockmeyer explained that companies should not take a "one-size-fits-all" approach in developing and maintaining its programs. Instead, companies should take a more "holistic" approach and design programs that address the specific risks to the company and to the industry.

(Continued above)

Further, she stressed that companies should periodically reassess those risks and adjust their programs accordingly. Ms. Brockmeyer noted that a good compliance program needs to be "intertwined" with the financial controls of the company. Ms. Brockmeyer invited company officials to make use of the recently issued "Resource Guide to U.S. Foreign Corrupt Practices Act," a joint release from the SEC and the Department of Justice. **[1]**

Ms. Brockmeyer also discussed two recent significant decisions in FCPA enforcement actions brought by the SEC. At issue in both rulings was the extent to which U.S. courts should exercise personal jurisdiction over foreign nationals for alleged FCPA violations. On February 8, 2013, Judge Richard Sullivan denied a motion to dismiss filed by three former executives of a Hungarian telecommunications company. **[2]**

The government alleged that the executives had bribed Macedonian government officials in order to gain preferential treatment for their company, which had traded American depositary receipts on a U.S. exchange. As part of those alleged efforts, emails between individuals outside the United States containing "sham" contracts were routed through and stored on servers in the United States. In seeking dismissal, the executives argued that the government had not alleged "use of United States interstate commerce," stressing that the emails were not intended to be directed to servers within the United States.

Citing legislative history and criminal statutes with similar provisions, Judge Sullivan denied the motion. The Court explained that the FCPA did not require a showing of intent to use instrumentalities inside the United States, but only that such instrumentalities had been used.

On February 19, 2013, Judge Shira Scheindlin granted a motion to dismiss filed by a former executive at AG Siemens. **[3]** The executive, a German citizen and one of seven individual defendants charged in the complaint, argued that the Court lacked personal jurisdiction over him, noting that he had never worked in the United States.

(Continued below)

The SEC countered that the executive had pressured a Siemens employee in Argentina to authorize bribes, eventually resulting in false SEC filings. In dismissing the charges against the German executive, Judge Scheindlin expressed her concern over the lack of any “limiting principle” in evaluating minimum contacts for purposes of personal jurisdiction. The Court explained that if “support for the bribery scheme satisfied the minimum contacts analysis, even though he never authorized the bribe, nor directed the cover-up, much less played any role in the false filings, minimum contacts would be boundless.”**[4]**

Ms. Brockmeyer reconciled the decisions by explaining that the executives in *Straub* clearly directed their conduct at the United States by making misrepresentations to auditors and signing the false SEC filings, whereas the Siemens executive was much further removed from the conduct. Ms. Brockmeyer cited both cases as examples of the SEC’s aggressive stance on the extraterritorial reach of the FCPA. Based on the conference’s overall theme of aggressive enforcement, the SEC clearly intends to continue to investigate executives regardless of their location.

For more information on the SEC Speaks 2013 conference or the issues discussed in this Bulletin, please contact one of our practice group members above.

[1] A number of business groups, including the United States Chamber of Commerce, have criticized the Resource Guide for not adequately defining government expectations in common factual scenarios. Without addressing this criticism directly, Ms. Brockmeyer explained that the Resource Guide was intended for a broad audience, including non-lawyers, and meant to be a desktop reference that would assist compliance managers and other professionals in identifying issues.)

[2] *SEC v. Straub*, No. 11 Civ. 9645, 2013 WL 466600 (S.D.N.Y. Feb. 8, 2013)

[3] *SEC v. Sharef*, 11 Civ. 9073, 2013 WL 603135 (S.D.N.Y. Feb. 19, 2013)

[4] *Id.*, at 18.

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