



EIB World Trade Headlines

Evolutions In Business • www.eib.com • (978) 256-0438
Fax: (978) 250-4529 • P.O. Box 4008, Chelmsford, MA 01824

Month 2012- Vol4, Issue #

FOR IMMEDIATE RELEASE BUREAU OF INDUSTRY AND SECURITY Office of
Congressional and Public Affairs September 6, 2012 www.bis.doc.gov (202)
482-2721

FORMER SOLDIER PLEADS GUILTY TO PARTICIPATION IN INTERNATIONAL ARMS SMUGGLING RING

(Defendant Supplied Semi-Automatic Weapons for
Export to China)

Joseph Debose, a resident of North Carolina and a former Staff Sergeant in a U.S. Special Forces National Guard Unit, pled guilty today in United States District Court for the Eastern District of New York before the Honorable Eric N. Vitaliano to violating the Arms Export Control Act. According to court documents, Debose provided multiple shipments of firearms to co-conspirators who then secreted the weapons in packages and transported them to shipping companies to be sent to customers in China. The weapons included numerous semiautomatic handguns, rifles and shotguns. When sentenced, Debose faces up to 20 years in prison.

The charges were announced by Loretta E. Lynch, United States Attorney for the Eastern District of New York, James T. Hayes, Jr., Special Agent-in-Charge, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), New York; Joseph Anarumo, Jr., Special Agent-in-Charge, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), New York Field Division; Victor W. Lessoff, Acting Special Agent-in-Charge, Internal Revenue Service (IRS), New York Field Office; and Sidney Simon, Special Agent-in-Charge, Department of Commerce (DOC), Office of Export Enforcement, New York Field Office.

(Continued below)

NEWSLETTER NOTES

*FORMER SOLDIER PLEADS GUILTY TO PARTICIPATION IN INTERNATIONAL ARMS SMUGGLING RING

*CBP Bulletin 8/22/12 - Polyurethane Coated Gloves

*CBP Bulletin 8/15/12 - Vacuum Cleaner Parts

*CBP Posts Updated Contact Information for Drawback Centers

*ICE Issues Information on Major Fine against HK Company for False Invoicing to Avoid Customs Duties

*CBP Posts Agenda for Washington Trade Symposium - Onsite Registration Closed but Webcast Still Open

*Import and Customs Consequences of Mergers, Acquisitions, and Divestitures - Participation in CBP Programs

* Lessons Learned: The United Technologies Corporation Case (Updates in Revisions to Export Regulations)

Authorities initially learned of the arms smuggling scheme after police in China seized a package containing firearms with defaced serial numbers, which had been shipped from Queens, New York. Upon learning of the seizure of the weapons, U.S. law enforcement officials traveled to China to examine the evidence. The types of weapons seized by the Chinese authorities have been designated by the President of the United States on the United States Munitions List, and may not be exported without a license from the U.S. State Department. With the aid of forensic techniques, agents determined that one of the weapons seized in China had originally been purchased in North Carolina. Agents then traced that gun, and others, to Debose. Agents arrested Debose in a sting operation when he arrived at a meeting location with a truckload of guns for the next shipment. Debose was carrying a loaded .45 caliber pistol at the time of his arrest. To date, four individuals have been charged with weapons trafficking and export offenses as a result of this investigation.

"The defendant traded the honor of his position in the National Guard for the money he received for smuggling arms to China. In blatant disregard for everything he was sworn to uphold, the defendant placed numerous firearms into a black market pipeline from the United States to China," stated U.S. Attorney Lynch. "We utilize all available resources to stop the flow of illegal weapons through New York and overseas. This case demonstrates the effectiveness of a collaboration among multiple federal law enforcement agencies and our foreign partners to address a global challenge." Ms. Lynch expressed her grateful appreciation to the federal agencies that worked closely together to investigate the case.

The government's case is being prosecuted by Assistant United States Attorney Seth DuCharme, with assistance from Trial Attorney David Recker of the Department of Justice Counterespionage Section. Assistance also was provided by the U.S. Attorneys' Offices in the Northern District of West Virginia and the Eastern District of North Carolina.

The Defendant: JOSEPH DEBOSE Age: 30

Please visit <http://www.bis.doc.gov/index.htm> or <http://beta-www.bis.doc.gov/index.php/about-bis/newsroom> on our BETA site for more information.

Waterfront Employer - Union Tensions on East/Gulf Coasts and West Coast

Here is what we know:

- *The ILA master contract with USMX that covers the East and Gulf Coast Ports expires on 9/30/12.
- *Contract talks between the ILA and USMX broke down last week.
- *The ILA has stated that it will not give in on technology issues.
- *The ILA claims that it has support from the ILWU and ITWF.
- *The ILA Local 1804-1 in Newark has voted to authorize a strike.
- *The USMX wants to cap "Container Royalties" which were implemented to protect ILA union members from loss of work.
- *The USMX today called for both sides to sit down again and negotiate.
- *The National Retail Federation, which represents 1 in 4 jobs in the U.S., has called for both sides to resume negotiations – see their letter below. There are many other trade groups lobbying for negotiations.
- *The ILWU in Portland, OR still has an issue with the IBEW on who plugs in reefer containers. The issue has still not been fully resolved.
- *Local 63 OCU of the ILWU, the Clerical Workers at the Ports of Los Angeles and Long Beach, restarted negotiations for a contract that expired in June 2010. The OCU have struck three times – once for 9 days and twice for a day. The rest of ILWU workers were barred from crossing the picket line. If they decide to strike again, the courts have ruled that the rest of ILWU locals can honor the picket line.
- *There is a Presidential Election campaign going on right now with the election scheduled for November 6, 2012.

(Continued below)

- *Congress has been in virtual gridlock.
- *Our economy has sustained modest growth
- *A strike or lockout of the ILA and/or the ILWU will cause severe disruption in the supply chain during a critical shipping time and could damage the economic recovery.

Here is what we do not know:

- *We cannot predict if the ILA and USMX are just posturing.
- *We cannot predict that the ILA and USMX will come to an agreement before the strike deadline or even if they would agree to a contract extension while negotiating.
- *We cannot predict what will happen with the OCU in LA/LB. The maximum impact for them is to go out on strike if the ILA strike or are locked out.
- *If there is a strike on either coast, we cannot predict if President Obama will invoke the Taft-Hartley Act which would force the ILA back to work or the USMX to end a lockout for an 80 day cooling off period. President Bush invoked this Act 10 days after a lockout of the ILWU in 2001.

What can you might want to do right now:

- *Conserve as much inventory as possible.
- *Consider immediately trying to book space on a vessel that calls the West Coast and using mini-landbridge to East and Inland points and importing more inventory than usual – at least enough to survive a two week potential gridlock. The space on these ships is filling fast and may not be available.
- *Air Freight may be an option. However, this is a typically busy period for airfreight. There have also been articles about Apple booking airfreight space for their new products.
- *Use Industry Groups to lobby all parties, including Government, to resume negotiations and to settle without a lockout/strike or agree to an extension of the contract while negotiating.

CBP Issues Updated Instructions for Replacement of Refund Checks

U.S. Customs and Border Protection (CBP) updated its instructions for importers that received notification that a CBP issued refund was returned to the U.S. Treasury as undeliverable and was canceled. CBP notes, if you changed your address and did not properly update it within CBP’s database you must complete CBP Form 5106 with the correct address. If you have a valid continuous transaction bond on file with CBP and only the mailing address needs to be changed, you must send a completed CBP Form 5106 to the Bond Team (Debt Management Branch, Indianapolis, IN). CBP notes, if both the physical and mailing address must be changed then an address change rider along with an accompanying CBP Form 5106 must be sent to Bond Team. These documents can be emailed to CBP.BONDQUESTIONS@DHS.GOV or faxed to (317) 614-4517 for processing. According to CBP, once your address has been updated please return a copy of the replacement check letter you received along with a statement that your address and bond have been updated to the Refunds Team (Collections, Refunds and Analysis Branch, Indianapolis, IN) using the contact information listed.

In addition, if you do not have a valid bond on file with CBP please complete CBP Form 5106 with the correct address and return it with a copy of the replacement check letter you received to the Refunds Team using the contact information provided. If all required information is received the address will be updated in CBP’s database. *** If you are a broker obtaining this information on behalf of your client you must submit a valid Power of Attorney (POA) before the replacement check can be issued. Please include the POA with a copy of the letter received along with a statement that the client’s address and bond (if applicable) have been updated. CBP advises, be aware that the processing time for replacement checks is 6-8 weeks.

In some cases, the importer number used for the refund has been voided in CBP’s database. This will require you to consult the “Voided Importer Record FAQs” for additional information.

CBP Form 5106:
http://forms.cbp.gov/pdf/CBP_Form_5106.pdf

“Voided Importer Record FAQs”:
http://www.cbp.gov/xp/cgov/trade/trade_programs/bonds/pilot_program/voided_importer_faq.xml

CBP notice:
http://www.cbp.gov/xp/cgov/trade/priority_trade/revenue/replacement_checks.xml

CBP Bulletin 8/22/12 - Polyurethane Coated Gloves

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 46, No. 34); CBP is:

*proposing to revoke a ruling on the classification of certain polyurethane coated gloves.

Polyurethane Coated Gloves - Three styles of polyurethane coated gloves. All are string knit gloves featuring a polyurethane palm coating on the outer surface of the palms. According to CBP, they have previously ruled that the gloves were articles of plastic. CBP now believes because the remainder of the gloves are composed of non-coated textile fabric, they aren't articles of plastic but are partially coated textiles. While subheading 3926.20, HTSUS, also provides for gloves of plastic, the instant articles must first meet the terms of the heading before CBP can consider the application of the accompanying subheadings.

*Current: 3926.20.1050, Free ("Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves, mittens and mitts): Seamless: Other: Other".)

*Proposed: 6116.10.55, 13.2%, ("Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: Without fourchettes: Other: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof.")

(Continued above)

*Proposed for revocation: NY N013115 (2007)

*Proposed for modification: NY N042821 (2008)

*Proposed new ruling: HQ H220278

CBP Bulletin available at CBP notice (08/22/12)

http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2012/vol46_08222012_no35/title.ctt/title.pdf

ITA Issues FR Notice for Healthcare Trade Mission to Brazil in May 2013

The International Trade Administration (ITA) announced a medical/healthcare industry trade mission to Brazil in conjunction with Hospitalar 2013, the region's major healthcare trade mission. The trade show, scheduled for May 21-24, 2013, attracts a high number of visitors from Mexico, Central and South America, as well as attendees from Europe, Asia and Africa. This trade mission is intended to include representatives from a variety of U.S. medical/healthcare industry manufacturers (equipment/devices, laboratory equipment, emergency equipment, diagnostic, physiotherapy and orthopedic, healthcare information technology, and other allied sectors), service providers, and trade associations, the ITA said.

Mission participants will have tabletop exhibits at the ITA booth at Hospitalar and prearranged one-on-one appointments at the tables to introduce the participants to end-users and prospective partners whose needs and capabilities are best suited to each U.S. participant's strengths. Reservations are due by 03/08/13. According to the ITA, it will review all applications and make selection decisions on a rolling basis.

Fall has arrived. Behold the changing leaves, and enjoy the crisp breeze. Let your eyes take in the bursts of color. Transformation is afoot and hope is in the air.



CBP Bulletin 8/15/12 - Vacuum Cleaner Parts

U.S. Customs and Border Protection (CBP) posted CBP Bulletin (Vol. 46, No. 34);

CBP is modifying a ruling on the classification of certain vacuum hoses.

Hose Assembly for Vacuum Cleaners

*Rubber and plastic hose assemblies for vacuum cleaners. The assembly includes a hose, a nylon brush and a connector and nozzle made of polypropylene. The flexible vacuum hose extends to clean hard to reach areas and it fits most standard vacuum cleaners. According to CBP, even though rubber hose assembly is used solely with vacuum, classification is under specific named provision, and is for duty purposes considered Canadian. Origin for marking purposes is U.S. based on the hose portion of the assembly. Plastic: Plastic hose assembly considered a set under GRI 3(b) with hose providing essential character and classified is under specific named provision.

*Old HTS/Rate: 8509.90.15, 3.4% (rubber)
8509.90.1560 2% (plastic)

*New HTS/Rate: 4009.12.00, Free, (Rubber) (Tubes, pipes and hoses, of vulcanized rubber other than hard rubber, with or without their fittings (for example, joints, elbows, flanges): Not reinforced or otherwise combined with other materials: With fittings.) 3917.33.00, 3.1% (Plastic) (Tubes, pipes and hoses and fittings therefore (for example, joints, elbows, flanges), of plastics: Other tubes, pipes and hoses: Other, not reinforced or otherwise combined with other materials, with fittings.)

*New Rulings: HQ H024323 (dated 06/28/12), revokes HQ 735542 (1994). HQ H024320 (dated 06/28/12), modifies NY K85099 (2004):

CBP notice (08/15/12)

http://www.cbp.gov/xp/cgov/trade/legal/bulletins_decisions/bulletins_2012/vol46_08152012_no34

Think Tank Posts Study on Job Loss Due to China Joining WTO - US China Business Council Disagrees

According to a report by the Economic Policy Institute (EPI) think tank, the U.S. has been "piling up foreign debt and losing export capacity," and the growing trade deficit with China has been a "prime contributor to the crisis in U.S. manufacturing employment" since China joined the World Trade Organization. They blame the China trade deficit for the loss of 2.7 million U.S. jobs between 2001 and 2011. The study reports that the trade deficit in the computer and electronic products industry grew the most, displacing 1,064,800 jobs. Global trade in advanced technology product is often discussed as a source of comparative advantage for the United States, yet it is instead dominated by China.

In addition, EPI advised that competition with low-wage workers from less-developed countries (LDCs) such as China has driven down wages for workers in U.S. manufacturing and reduced the wages and bargaining power of similar, non-college-educated workers throughout the economy. The report indicates that a major cause of the rapidly growing U.S. trade deficit with China is currency manipulation. As China's productivity has soared, its currency should have adjusted, increasing in value to maintain balanced trade. Instead the yuan has remained artificially low as China has aggressively acquired dollars and other foreign exchange reserves to further depress the value of its own currency. Ennis noted EPI continues to link currency appreciation, the trade deficit, and American jobs, but "China's currency has appreciated over 30 percent against the dollar since 2005, but there has been no significant corresponding decrease in the trade deficit, showing there is a limited link between the two."

EPI report: <http://www.epi.org/publication/bp345-china-growing-trade-deficit-cost/>

CBP Issues Update on C-TPAT Mutual Recognition

U.S. Customs and Border Protection (CBP) posted an updated document regarding the mutual recognition of Customs-Trade Partnership Against Terrorism (C-TPAT) and foreign industry partnership programs. CBP advised the concept of mutual recognition (MR) is that C-TPAT and a foreign industry partnership program are compatible in both theory and practice, so one program may recognize the validation findings of the other program. CBP cautions that MR does not exempt any partner, whether domestic or foreign, from complying with other CBP mandated requirements. By the same token, mutual recognition does not replace any of CBP's cargo enforcement strategies. For example, importers still need to comply with the importer security filing requirements.

CBP has developed guidance for maintaining the continuity and/or restoring the flow of trade across the Nation's borders during and after an incident that disrupts the flow of trade at the border ports of entry. Business resumption privileges consideration, however, while envisioned for C-TPAT members, is not a factor that is included in any mutual recognition arrangement. As reported, the C-TPAT MR process involves the following four phases:

*a side-by-side comparison of the program requirements;

*a pilot program of joint validation visits;

*the signing of a mutual recognition arrangement; and

*the development of mutual recognition operational procedures.

CBP has already signed MR Arrangements with New Zealand (June 2007), Canada (June 2008), Jordan (June 2007), Japan (June 2009), Korea (June 2010) and the European Union (May 2012).

According to CBP, both Customs Administrations and the private sector reap benefits from a MRA, including:

- *Common Standard/Trade Facilitation;
- *Less Redundancy/Duplication of Efforts.
- *Risk Assessment Tool.
- *Efficiency & Transparency.

CBP notice:

http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_program_information/international_efforts/mutual_recoq_info.ctt/mutual_recoq_info.pdf

SEC Information on Final Rule for Congo Conflict Mineral Reporting

The Securities and Exchange Commission (SEC) recently approved a final rule to require companies to publicly disclose their use of conflict minerals that originated in the Democratic Republic of the Congo (DRC) or an adjoining country. The final rule applies to companies using minerals including tantalum, tin, gold, or tungsten if:

1. the company files reports with the SEC under the Exchange Act; and
2. the minerals are "necessary to the functionality or production" of a product manufactured or contracted to be manufactured¹ by the company.

The SEC reports, Companies meeting these criteria will have to conduct "a reasonable country of origin inquiry" and provide the disclosure on new Form SD to the SEC. Companies that know or have reason to believe that the minerals may have originated in the covered countries, and are not from scrap or recycled sources will have to file a more detailed "Conflict Minerals Report" as an exhibit with Form SD.

According to the SEC the first disclosure reports will be due 05/31/14 for fiscal year 2013, and will be due annually on May 31 every year thereafter. The SEC's final rule is pursuant to Section 1502 of the Dodd-Frank Act, which was enacted because of concerns that the exploitation and trade of conflict minerals by armed groups is helping to finance contract in the DRC region and is contributing to an emergency humanitarian crisis. Section 1502 of the Act amends the Securities and Exchange Act of 1934 to add Section 13(b).

SEC press release:

<http://www.sec.gov/news/press/2012/2012-163.htm>

WTO Announces Accession of Russia to WTO Effective 8/24/12

The World Trade Organization (WTO) recently posted the following notices:

*Russia becomes the 156th WTO member today. Vanuatu will join the WTO on 08/24/12 as its 157th member. From the date of accession, Russia has committed to fully apply all WTO provisions, with recourse to very few transitional periods. Vanuatu has committed to fully apply all WTO provisions and did not require recourse to any transitional period except on intellectual property and on the publication of trade information.

WTO press release:

http://www.wto.org/english/news_e/pres12_e/pr671_e.htm

CBP Posts Updated Contact Information for Drawback Centers

U.S. Customs and Border Protection (CBP) posted a notice providing information regarding its four drawback center locations located in Chicago, Houston, New York/Newark, and San Francisco. CBP's notice lists each center and provides contact information for each one.

CBP notice:

http://www.cbp.gov/xp/cgov/trade/trade_programs/drawback/locations.xml

Census Posts Updated AES Best Practices Manual

The Census Bureau revised its Automated Export System (AES) Best Practices Manual. According to Census, they have added an Export Filing Resources section, which includes a list of resources available for training and informational purposes.

The AES Best Practices Manual:

http://www.census.gov/foreign-trade/aes/documentlibrary/bp/aes_bestpractices.html

U.S. Chamber of Commerce Pushing for Russia PNTR

Congress should approve Permanent Normal Trade Relations (PNTR) with Russia as it became the 156th member of the World Trade Organization (WTO), announced the U.S. Chamber of Commerce President Thomas Donohue in a recent report. Russia became a full member of WTO effective 08/22/12. Russia's accession, along the upcoming accession of Vanuatu on 08/24/12, brings the total number of WTO members to 157. As reported, on average, Russia will apply a final bound tariff for 7.8% for goods and has made specific commitments on 11 services sectors. Donohue reported "more than 150 countries will benefit as Russia today enacts reforms to open its market, protect intellectual property, and strengthen the rule of law. ... The whole world is ready — except the United States.

Until Congress approves PNTR with Russia, Moscow will be free to deny the United States the full benefits of its reforms." According to Donohue, PNTR "exclusively benefits Americans selling their goods and services in the Russian market. The United States gives up nothing -- not a single tariff -- in approving it." The National Foreign Trade Council (NFTC) reports Congress should pass PNTR legislation immediately upon returning to Washington following the August recess. NFTC President Bill Reinsch noted as Russia joins World Trade Organization, the U.S. "has an opportunity to become a bigger economic player in one of the fastest-growing economies in the world. But only if Congress passes PNTR legislation. ... If Congress does not act quickly, American companies, exporters and workers will be at a competitive disadvantage in the Russian market."

The National Foreign Trade Council report:

<http://www.nftc.org/newsflash/newsflash.asp?Mode=View&id=236&articleid=3519&category=All>

US Chamber press release:

<http://www.uschamber.com/press/releases/2012/august/chamber-urges-approval-pntr-russia-joins-wto>

Bearings and Housings Separately or Individually from Japan

The pivot bearing is comprised of steel balls and a sapphire plate that retains the balls. The housing is a manufacture of brass designed to incorporate the pivot bearing. All the articles are for use in aircraft instrumentation. CBP previously classified the pivot bearings based on the inclusion of a sapphire plate. CBP now finds that pivot bearings have their own classification. According to CBP, the housings were properly classified previously. The combined pivot bearings and housing were previously classified based on the sapphire plate, which CBP now finds shouldn't preclude classification elsewhere.

*Current: Housings alone: 8483.30.8020, 4.5% (bearing housings, ball or roller type). Pivot bearing and the pivot bearing and housing combined: 7116.20.4000, 10.5%, (precious or semiprecious stones (natural, synthetic or reconstructed).

*Proposed: Pivot bearings alone: 8482.10.5068, 9% ("ball or roller bearings, and parts thereof; ball bearings: other: other.") Housings alone: 8483.30.8020, 4.5% ("transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: bearing housings; plain shaft bearings: other: bearing housings: ball or roller bearing type.").

Pivot bearings and housings: 8483.20.8040, 4.5%, "transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: housed bearings, incorporating ball or roller bearings: other: incorporating ball bearings."

*Proposed for modification: NY N070076 (2009)

*Proposed new ruling: HQ H088396

CBP Bulletin (08/29/12)

http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2012/vol46_08292012_no36/title.ctt/title.pdf

ICE Issues Information on Major Fine against HK Company for False Invoicing to Avoid Customs Duties

U.S. Customs and Border Protection's (CBPs) Regulatory Audit Unit, Immigration and Customs Enforcement (ICE) recently reported that a Hong Kong-based jewelry exporter pleaded guilty to customs fraud and faces nearly \$2 million in fines and restitution. Fai Po Jewelry (H.K.) Co. admitted to intentionally submitting false invoices to the government in connection with the importation of merchandise in order to avoid paying more than \$1 million in customs duties. The company was ordered to pay an \$800,000 criminal fine and restitution of \$1,017,737. Additionally, the company was ordered to pay the cost of the investigation in the amount of \$144,324 and was placed on three years' probation.

According to ICE, from early 2007 to late 2009, Fai Po enclosed false invoices in their direct shipments to U.S. purchaser ShopNBC while sending the actual full value invoice to the purchaser by email. Fai Po advised the purchaser to ignore the invoice enclosed in the shipment because it was there only to avoid customs clearance issues. ICE announced, since Fai Po was acting as both the exporter and importer, the company was responsible for customs duties, not the U.S. purchaser.

The purchaser paid the higher amount listed on the true invoice, while Fai Po declared to the government the lower value on the fraudulent invoice. The purchaser was not aware of Fai Po's scheme and didn't receive any benefit from it. The fraud was detected by CBP when an audit revealed a discrepancy between the actual value of the gold jewelry shipment and what was stated on the fraudulent invoices.

ICE Press Release:

<http://www.ice.gov/news/releases/1208/120827anchorage.htm>



**U.S. Immigration
and Customs
Enforcement**

ITA Issues FR Notice to Exclude Novelty Drumstick Pencils from China AD Case on Wood Pencils

The International Trade Administration (ITA) recently revoked, in part, the antidumping duty (ADD) order on certain cased pencils from China (A-570-827) to exclude novelty pencils shaped like drumsticks from the AD duty order. Effective 06/01/11, pencils that are shaped like drumsticks, do not contain erasers, and are longer than regular wooden pencils are no longer subject to the AD duty order on cased pencils from China. The ITA made no changes from its preliminary results of changed circumstances review, which recommended partial revocation. As reported, ThinkGeek, Inc., a U.S. importer of subject merchandise, requested the changed circumstances review and revocation in part.

The U.S. pencil industry expressed no interest in inclusion of drumstick novelty pencils under the AD duty order. No parties filed comments after the preliminary results. The ITA will instruct U.S. Customs and Border Protection (CBP) to liquidate, without regard to AD duties, all unliquidated entries of novelty drumstick pencils entered, or withdrawn from warehouse, for consumption on or after 06/01/11. The ITA will also instruct CBP to refund any cash deposits collected with respect to these entries.

ITA Contact - Mahnaz Khan (202) 482-0914
ITA FR notice (08/31/12)
http://www.ofr.gov/OFRUpload/OFRData/2012-21607_PI.pdf



INTERNATIONAL
TRADE
ADMINISTRATION

CBP Posts Agenda for Washington Trade Symposium - Onsite Registration Closed but Webcast Still Open

U.S. Customs and Border Protection (CBP) released the detailed agenda for the upcoming 2012 East Coast Trade Symposium to be held in Washington, D.C., Oct. 29-30. As reported, the general sessions will focus on global supply chain security. Topics include the National Strategy for Global Supply Chain Security and the National Export Initiative (NEI). Other topics will be Authorized Economic Operator programs, and Mutual Recognition Arrangements. General Sessions are scheduled at 1 p.m. and 5:30 p.m. Oct. 29, as well as 9 a.m. Oct. 30. Breakout sessions are set for 2 p.m. and 3:45 p.m. Oct. 29.

CBP notice:

http://www.pdfdownload.org/pdf2html/pdf2html.php?url=http%3A%2F%2Fwww.cbp.gov%2Flinkhandler%2Fcgov%2Ftrade%2Ftrade_outreach%2F2012_tradesymp%2F2012_ec_agenda.ctt%2F2012_ec_agenda.pdf&images=yes

Electronic Manufacturer Orgs Post Updated Guidance on Packaging for International Trade

A guide for the supply chain disclosure of substances used in packaging for global sale and distribution of electronic products was recently released by the Consumer Electronics Association, DIGITALEUROPE, and the Japanese Green Procurement Survey Standardization Initiative. The Joint Industry Guide -- Material Composition Declaration for Packaging of Electrotechnical Products -- JIG-201 Ed. 1.1 is an update to the industry materials declaration guide for reporting the materials used to transport and protect electrotechnical products across the global supply chain.

Manufacturers and other purchasers are required to have this data to comply with regulations, meet design specifications, and reach sustainability goals and other objectives.

JIG Guide: <http://www.ce.org/JIG>

OECD Posts Report on Q2 2012 World Merchandise Trade

According to the Organisation for Economic Co-operation and Development (OECD), merchandise trade slowed in most major economies in Q2 2012; but grew in China and Japan. As reported, the contraction hit France, Germany, Italy and the U.K., as well as India, Russia and South Africa. While imports shrank in Canada and the U.S., exports grew moderately in both countries. In addition, exports in China increased by 12.8%, the highest rate since Q1 2007, while imports grew at 2.5%. For Japan, both imports and exports rose; however, the rate of import growth was at its lowest level since Q2 2009.

OECD report:

<http://www.oecd.org/std/internationaltradeandbalanceofpaymentsstatistics/internationaltradestatisticstrendssecondquarter2012.htm>

Singapore Seeking Comment on Advance Export Declaration Implementation

Singapore Customs is seeking comments from shippers, freight forwarders, and IT solution providers on the implementation of its Advance Export Declaration (AED) system, through which it will require export declarations for all goods to be submitted prior to the goods leaving Singapore beginning 04/01/13. Specifically, Singapore Customs is interested in information and communication technologies solutions that can help to enhance the customs declaration process by enabling early capturing of source data and reusing it for the customs declaration. Singapore Customs advised the current process is manual and forwarders often do not have sufficient time and accurate information to perform the customs declaration before the export of goods.

With the implementation of AED, filers must submit documentation to ensure adequate time for risk assessment; thus preventing cargo from unnecessary checks and delays due to lack of information. Singapore Customs recommends the export declaration to be submitted prior to cargo lodgment with port operators and ground handling agents.

Singapore Customs notice:

<http://www.customs.gov.sg/NR/rdonlyres/806059B3-FEBE-4D85-9717-C4270BE42857/24311/NoticeonRFIforICTsolntoAED27Aug.pdf>

CBP Posts Updated Notice on October CHB Exam

U.S. Customs and Border Protection (CBP) posted an updated version of its notice announcing that the next customs broker license exam will be on Wednesday, 10/03/12. The examination will be administered at various locations. Applicants will be notified of the exam location and may contact the service port for additional information. CBP notes that in order to be eligible to take the broker examination, an individual must be a U.S. citizen, 18 years of age, and is not an officer or employee of the U.S. government. In addition, CBP has automated the CBP Form 3124E, "Application for Customs Broker License Exam" and the payment and collection of \$200 examination fee process. Applicants must apply and pay the applicable \$200 fee online by 12:00 p.m. (noon/EST), 09/10/12.

NOTE: Applications and fees that are submitted directly to the service port or CBP Headquarters will be returned to the applicant. CBP advises, any applicant who files an application and subsequently wishes to withdraw from the exam, must submit a written notice of withdrawal to the CBP service port noted on the application, by close of business 09/28/12.

Applicants who need assistance in completing the form, or have questions concerning payment may send an email to cbp.cbppay.gov@dhs.gov or may contact the CBP Pay.gov Help Desk at (317) 614-4964. The exam consists of 80 multiple-choice questions and a score of 75% is required to pass. CBP wrote the April 2011 exam using the below mentioned references, which applicants should bring along with any other pertinent reference material to the examination:

* Harmonized Tariff Schedule of the U.S. (HTS) (2012 version, No Supplements)

*19 CFR (revised as of April 1, 2012 Parts 0 to140, 141 to 199)

*Customs and Trade Automated Interface Requirements (CATAIR): (Appendix B – Valid Codes; Appendix D – Metric Conversion; Appendix E – Valid Entry Numbers; Appendix G – Common Errors; Glossary of Terms)

(Continued below)

*Instructions for Preparation of CBP Form 7501 (July 24, 2012)

*Directives (3550-055 – Instructions for Deriving Manufacturer/Shipper Identification Code; 3550-079A – Ultimate Consignee at Time of Entry or Release; 3530-002A – Right to Make Entry; 3510-04 -- Monetary Guidelines for Setting Bond Amounts.)

April 2012 Exam and Answer key:

http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/broker_exam/exam_and_key_downloads/

CBP Form 3124E, "Application for Customs Broker License Exam":

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=38464098>

CBP notice:

http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/broker_exam/notice_of_exam.xml

Import and Customs Consequences of Mergers, Acquisitions, and Divestitures - Participation in CBP Programs

Braumiller Schulz, LLP www.globaltradelaw.net

Example 1: Smith Corporation purchases Jones Company, a medium-sized importer. Smith Corporation is a C-TPAT and Importer Self Assessment program participant. Smith Corporation also uses the U.S. Customs & Border Protection (CBP) Reconciliation Prototype for a portion of its entries and claims drawback on some of its exports. How will the acquisition of Jones Company affect these programs? First, Smith Corporation will need to decide whether to bring the former Jones Company into its C-TPAT program. A couple of major factors influencing this decision will be (1) whether Jones Company is already a C-TPAT participant and (2) what form Jones Company will take after acquisition.

As part of the acquisition process, the customs compliance personnel at Smith Corporation need to find out whether Jones Company is in the C-TPAT program. If Jones Company is already a participant, it will make it easier to bring it into Smith Corporation's existing program. If it isn't, Smith Corporation will need to determine whether the former Jones Company is C-TPAT ready and, if so, begin the process of applying for C-TPAT status.

(Continued above)

The second factor is the form Jones Company will take. If it will be folded into Smith Corporation and becomes an unincorporated division, the former Jones Company assets will need to be given a separate suffix to Smith Corporation's importer-of-record number. If Jones Company is made a separately incorporated subsidiary of Smith Corporation it will already have its own importer-of-record number and identity. Should Smith Corporation decide to bring the former Jones Company into its C-TPAT program, it can do so under that separate identity – using either a different suffix or a different importer-of-record number.

Example 2: Smith Corporation is a participant in the CBP Importer Self Assessment (ISA) Program. If Jones Company is also an ISA participant, it will be reasonably easy to bring them into the program after the acquisition is complete. However, if Jones Company is not in ISA, Smith Corporation will need to decide whether to expand its ISA program to include the former Jones Company. A requirement for ISA is that the business unit or subsidiary – based on the 11-digit importer of record number – must be in the C-TPAT program. Accordingly, the customs compliance personnel at Smith Corporation will need to first deal with the C-TPAT status of the former Jones Company, then decide whether to have it in the ISA program as well.

Having the former Jones Company in the Smith Corporation ISA program will involve

- (1) establishing or updating the Jones Company C-TPAT status;
- (2) applying to CBP;
- (3) establishing or verifying the former Jones Company's internal controls, and
- (4) going through the likelihood of a new application review meeting with CBP Regulatory Audit.

Regardless of whether the former Jones Company is made part of the Smith Corporation ISA program, Smith will need to advise CBP in writing of the acquisition, as this is a reporting requirement.

(Continued below)

Example 3: Smith Corporation handles a portion of its entries through the CBP Reconciliation Prototype. As part of the acquisition, Smith Corporation should find out whether Jones Company is a Reconciliation participant. If it is, the program and supporting bond and bond rider may need to be updated to reflect any new name or business organization. If Jones Company does not participate in reconciliation, the compliance personnel at Smith Corporation will need to assess whether that will be necessary and then either make a separate application or merge the former Jones Company entries into its program and make appropriate changes to its bond and bond rider.

Participation in drawback programs is another subject that should be explored during the acquisition stage. If Smith Corporation is already a drawback claimant, it should determine whether the former Jones Company has an existing drawback program that could be merged into Smith's program. If Jones Company is not a drawback claimant it may be because they were not aware of drawback or felt it was too much trouble. If that is the case, Smith Corporation may want to see if drawback opportunities exist and expand its program to the former Jones Company.

Most drawback entries are handled by drawback brokers who are paid through a percentage of the refunds received. If the Jones Company acquisition leads to an expansion of the Smith Corporation drawback program, it may be worthwhile to explore renegotiating the drawback broker agreement to obtain a better rate due to the increased claims.

Many drawback claims are backed by a bond to obtain accelerated refunds. Any change to the Smith Corporation drawback program resulting from the Jones Company acquisition could result in the need for a new bond or an increase in the coverage of existing bonds. Depending on what corporate form Jones Company takes, there may also be a requirement for a new power of attorney with the drawback broker.

Before we leave the subject of drawback, be aware that claims for drawback are based on the separate corporate entities that import, manufacture and export products. If the corporate entities change because of an acquisition, the drawback claims may need to be restructured. If the entities are separately incorporated, one entity may need to assign rights to claim drawback to another.

So – aren't mergers, acquisitions and divestitures lots of fun? Only a glutton for punishment would think so. Actually there is significant work to be done – something to let your management know about when it comes time for a pay raise!

Lessons Learned: The United Technologies Corporation Case (Updates in Revisions to Export Regulations)

Braumiller Schulz, LLP

www.globaltradelaw.net

The recent export enforcement action involving United Technologies Corp. offers exporters many lessons in export compliance, and demonstrates how even seemingly well-prepared export compliance programs are vulnerable to failure. This case involved multiple subsidiaries and divisions of United Technologies, including Hamilton Sundstrand Corp., Sikorsky Aircraft Corp. Derco Aerospace, Inc., Kidde Technologies, Inc., Pratt & Whitney Rocketdyne, Pratt & Whitney U.S., and Pratt & Whitney Canada.

United Technologies was charged with 576 violations of the International Traffic in Arms Regulations (ITAR) in connection with the unauthorized export and transfer of defense articles, and the unauthorized provision of defense services to multiple countries over a number of years. A brief description of the charges levied by the Directorate of Defense Trade Controls (DDTC) are as follows:

*13 charges: Hamilton Sundstrand exported electronic engine control software specifically modified for use in military helicopters to Pratt & Whitney Canada without a license.

*11 charges: Pratt & Whitney Canada re-exported the engine control software to China.

*1 charge: Hamilton Sundstrand failed to file the required export information for the shipment of an ITAR-controlled defense article to Canada.

*1 charge: Failure to notify DDTC of the United Technologies' knowledge of the sale or transfer of a defense article to a proscribed country.

*58 charges: Hamilton Sundstrand exported to multiple countries defense articles incorrectly determined to be not subject to the ITAR.

(Continued below)

*1 charge: Export of a defense article to a Venezuelan military end-user.

*51 charges: Pratt & Whitney U.S. exported technical data and automation tools to an Indian company and its contract engineers without a license.

*1 charge: Hamilton Sundstrand exported a laptop containing technical data to China without a license.

*437 charges: Failure to abide by the substantive and administrative terms and conditions associated with DDTC-approved Technical Assistance Agreements (TAAs), Manufacturing Licensing Agreements (MLAs) and Warehousing Distribution Agreements (WDAs).

*2 charges: Kidde Technologies exported defense articles to Singapore without a license. Additionally, Pratt & Whitney Canada pleaded guilty to two of three criminal charges, including willfully exporting defense articles without a license in violation of Arms Export Control Act, and making false statements to DDTC.

United Technologies received a civil penalty of \$55 million, as well as the statutory debarment of Pratt & Whitney Canada. United Technologies also agreed to rigorous compliance and remedial measures. Finally, the company also agreed to pay more than \$20 million in civil penalties in a deferred prosecution agreement with the Department of Justice.

What Went Wrong?

In its charging letter, DDTC noted that it had considered United Technologies' voluntary disclosures and remedial compliance measures as significant mitigating factors, but due to the harm to national security and the systemic, longstanding and repeated nature of the violations, charged the company with 576 violations. The charges were gleaned from numerous transactions and unauthorized activity committed by United Technologies subsidiaries over the past six years, stemming from both bad actors and insufficient compliance oversight. For example, on several occasions, Hamilton Sundstrand exported electronic engine controls it manufactured to Pratt & Whitney Canada.

(Continued above)

Pratt & Whitney Canada subsequently re-exported the engine controls to China. Even after both companies became aware of the export control issues present in re-exporting the engine controls for a military end-use in China, Pratt & Whitney Canada continued to export the engine controls to China. In 2006, United Technologies first disclosed the unauthorized exports and re-exports of the engine controls. In its charging letter, DDTC noted that the 2006 disclosure was not submitted until two and a half years after Pratt & Whitney Canada and Hamilton Sundstrand became aware of the Chinese military end-use.

After the 2006 disclosure discussed above, United Technologies conducted a review of Pratt & Whitney Canada and Hamilton Sundstrand products during which it discovered additional unauthorized exports and re-exports stemming from the misclassification of ITAR-controlled items.

In another example, after the 2006 disclosure, Hamilton Sundstrand submitted a separate disclosure reporting that it had incorrectly classified 261 items as not subject to the ITAR, and had exported those items and related technical data on more than 800 occasions. In several other instances, Pratt & Whitney Canada, Hamilton Sundstrand and other company subsidiaries did not report or disclose violations until a year or more after the violations were discovered.

In 2008, a Pratt & Whitney U.S. review of technology control plans revealed that 51 ITAR-controlled technical data documents, including some designated as SME, were accessed without authorization by Indian engineers, both abroad and in the U.S. Further reviews revealed extensive additional opportunities for unauthorized access to controlled technical data.

The DDTC could not determine the exact scope of the violations due to Pratt & Whitney U.S.'s inability to record and track forensic evidence related to the data access. Pratt & Whitney Canada similarly disclosed violations involving the unauthorized access by foreign nationals to numerous ITAR-controlled drawings on the company's intranet system. Again, in most instances, the violations were not disclosed until a significant length of time had passed since the initial discovery.

(Continued below)

The failure to comply with DDTC-approved agreements, such as TAAs, MLAs and WDAs, made up a significant number of the violations charged. Company entities, such as Pratt & Whitney U.S., committed extensive violations of the DDTC-approved agreements. Examples include exceeding the scope of a TAA by providing training on engine design, development and production; exceeding the scope of several MLAs by engaging in the unauthorized manufacture of engine forgings, the unauthorized provision of defense services, and the unauthorized re-transfers of technical data and defense services to sublicensees; and exceeding the value of three MLAs by \$35 million. Other issues included additional unauthorized transfers and unauthorized foreign national access to unauthorized persons, including by foreign licensees, IT subcontractors and unauthorized employees.

Hamilton Sundstrand acknowledged that "it failed to manage its agreements properly and to keep adequate records of its ITAR-controlled activities." The failures were attributed to "a lack of clear compliance processes and adequate IT systems, due in turn to inadequate resources for compliance."

Compliance Program Lessons

According to DDTC, United Technologies, through its various subsidiaries, submitted multiple disclosures during the past several years with a broad spectrum of corrective and remedial measures to be implemented. Yet violations continued to occur, ultimately leading to this enforcement action. Below, we discuss a sample of the export compliance lessons to be learned from the case.

One of the most deceptively simple lessons is the importance of transparency into the activities of a company's subsidiaries or other entities, combined with "top down" support from company executives and upper level management. The phrase "deceptively simple" is appropriate here because, while the concept is simple in theory, obtaining this support is often difficult for trade compliance departments. Trade compliance receives neither the attention nor the support granted to company functions such as sales or research and development. However, both transparency and "top down" commitment are necessary for an effective compliance program.

(Continued above)

While this is often regarded as the least definable component of an effective compliance program, it is one of the most important, and touches on every aspect of trade compliance. Commitment from the top is needed to recognize and communicate the importance of trade compliance throughout all levels of a company, earmark adequate resources, run a trade compliance program, and remain receptive to the fact that an effective compliance program is organic and evolving. Similarly, "top down" support is necessary to allow trade compliance to have the level of visibility and transparency needed to effectively prevent violations from occurring, whether at the hands of "bad actors" or merely through a compliance oversight.

The importance of the proper classification and tracking of ITAR-controlled items and agreements cannot be overemphasized. Compliance with U.S. export regulation is predicated on the proper classification of the item or technology at issue. As shown above, many of the violations in the United Technologies case resulted from the incorrect classification of defense articles. The proper marking or identification of ITAR items is equally as important. How are you identifying physical products as ITAR-controlled? Are they stored in a separate area, tagged or otherwise designated as ITAR-controlled, or are they commingled with non-ITAR products? How are you storing and identifying ITAR-controlled technology maintained electronically? Any one of these questions, for which a proper procedure doesn't exist, may lead to inadvertent violations.

The prevalence of electronic exchanges of ITAR-controlled technical data also presents unique concerns. Many companies have procedures to ensure that emails containing ITAR-controlled technical data are designated as such, or that technical data is stored in ITAR-designated folders on the company's server or intranet. However, many companies aren't equipped to identify when this electronic technical data is accessed without authorization. Not only does this create potentially dangerous holes in a compliance program, it can make a full and accurate disclosure to DDTC extremely difficult, as the company is left without the ability to measure or quantify the type and level of unauthorized access.

(Continued below)

The management of activities authorized under DDTC-approved agreements is critical as well. We frequently see companies inadequately prepared to deal with the complexities of tracking and calculating the items, technology and services exchanged under an approved agreement. No "one size fits all" methodology for tracking and depreciating against these agreements exists; rather, a successful approach must be tailored to the specific activities authorized in the agreement.

The scope of an approved agreement is commonly exceeded in two ways: by value and by the scope of access to technology permitted. It is easy to understand how an agreement may be exceeded in value, for example, if goods are manufactured to a value in excess of that approved under an agreement. It becomes more complicated, especially if an effective method of depreciating against the agreement doesn't exist from the outset, to track and value the services performed or rendered under an agreement. Similarly, the scope of access to controlled technology approved under an agreement is also often exceeded.

Multiple variables can account for the difficulty in managing this aspect of an approved agreement, including employee turnover within your foreign subsidiary or business partner, poor IT control over controlled technology abroad, lack of training and understanding within your foreign subsidiary or partner regarding the permissible release and sharing of controlled technology, and any contractors or outsourced functions of your foreign partner.

Additionally, it is worth noting that even if a method of tracking the products and services exchanged under an approved agreement exists, the scope of the agreement may still be easily exceeded if both the U.S. and foreign parties to the agreement are not trained on the specific parameters of the agreement.