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NEWSLETTER NOTES

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Columbia Tech is a 2011 GINA Award recipient

ITAR at Columbia Tech

Posted on June 25, 2012 Prepared by Rich Schulman, Vice President of Quality and ITAR Technology Control Officer and Gerry St. Jean, Manager Audits and Training.

Columbia Tech has, for the fourth year in a row, successfully obtained ITAR re-registration from the Department of State. I've been part of the process since the beginning and can offer some insight into the journey, hopefully helping anyone considering taking on export controlled work, to avoid some of the most common obstacles to success.

This is a two part article on ITAR at Columbia Tech.

JULY 2012- PART 1

A) TIPS FOR BEGINNERS

First and foremost

- *Top management commitment* is crucial; otherwise, you'll find that the first time you run across a "tough" decision you'll be tempted to take the easy way out instead of the **right way** out. We have had total management commitment from the onset

Second

- *Scalable Security processes* are key; as business needs change your security plans / systems must be able to adapt at the same pace.

Hiring a consultant, to help with the Export Control plan and the Technology Control plan, is invaluable. Read as much information on the internet as possible and be sure to read and re-read all correspondence you receive from the US Government. Learn everything you can, from every avenue, about the way the government expects you to conduct business and adhere to it stringently.

Third

- Accuracy is paramount; the US Government is very specific about correspondence. In fact, they are very particular about the entire application process. Dot your I's and cross your T's ! The application process, including the form and method of payment, changed in late 2011. Our government now requires companies to wire money or use an automated bank check to pay fees; checks are NO longer accepted.

The first year we applied for re-registration we were ready to submit our application package when we received a letter reminding us that our application was due in 30 days **and** that a copy of that reminder letter needed to be part of the documentation. When the government states the "documentation should contain the following words", make sure everything matches 100%. Had we not thoroughly read that reminder letter, we would not have included that document in the package and our application would likely to have been delayed.

B) LEARNING AND TRAINING

We've attended numerous seminars on Export Control and have become very diligent at controlling ITAR (Military) and EAR (Commercial with military applicability) shipments. **E**xport **A**dministration **R**egulations are not as clear cut as ITAR regulations and, as such, require extra attention when learning the "ins" and "outs" of exportation. We've learned a great deal in the last several years about each of these programs especially supplier flow-down requirements

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We've spent considerable time training our associates on the basics of ITAR and EAR controls and the necessity of protecting our customer's technical data from unintentional exportation. Associate training has resulted in employees being more watchful and asking more questions. This is a good thing.

C) CONTINUAL IMPROVEMENT

As Columbia Tech began its journey, we designed our system to meet our needs at that time, but as our ITAR business increased we adapted our system to grow along with our ever changing business needs.

As part of our continual improvement process, we focus on improving every business process at Columbia Tech; this applies to ITAR processes as well. As we continue to grow, we scale each process learning more about the specific requirements dictated by our customers, the government, and our own systems. As changes are implemented, we make certain that our associates are educated to the changes too; improvement and education go hand-in-hand with successful transitions. Our ITAR program improves as we comply with our customer's demands AND with ever changing Government regulations.

President's Export Council Pushing for US-EU Negotiations by End of 2012

At a recent meeting of the President's Export Council (PEC), PEC adopted five letters of recommendation addressing:

1. export control and proposed provisions of the International Traffic in Arms regulations (ITAR);
2. the importance of the Transatlantic Partnership Agreement;
3. the establishment of permanent normal trade relations with Russia;
4. federal, state, and local coordination efforts on export promotion; and
5. travel and tourism.

PEC urged the President to proceed with 38(f) notifications to Congress with respect to the Export Control Reform initiative, PEC expressed concern with an upcoming State Department proposed rule on arms brokering, and noted the President should begin negotiations with the EU on a Transatlantic Partnership by the end of 2012.
Five adopted letters of recommendation to the President: http://trade.gov/pec
PECs notice: http://www.commerce.gov/blog/2012/06/07/secretary-bryson-encouraged-president%E2%80%99s-export-council-recommendations-help-strength

Defense Dept Issues FR Notice Proposing to Amend DFARS Identification and Valuation Requirements

The Defense Department (DoD) issued a proposed rule that would amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise requirements for unique identification and valuation of items delivered under DoD contracts. DoD said the proposed rule would revise the applicable prescription and contract clause to reflect the current requirements. DoD advised the contract clause at DFARS 252.211-7003, Item Identification and Valuation, requires unique identification for all delivered items for which the Government's unit acquisition cost is $5,000 or more and for other items designated by the government. In addition, the clause requires identification of the Government's unit acquisition cost for all delivered items, and provides instructions to contractors regarding the identification and valuation processes, it said. DoD said this proposed rule would revise the prescription and the clause to revise instructions for the identification and valuation processes. Changes would include:

· Adding definitions for data matrix and type designation;

· Specifically addressing item unique identification requirements for items with warranty requirements, DoD serially managed items, and special tooling or special test equipment;

· Amended data submission requirements for a Major Defense Acquisition Program; and

· Adding an alternative data submission method using either hard copy or a wide-area-workflow attachment.

DoD requests comments 08/14/12.
DoD FR notice http://www.gpo.gov/fdsys/pkg/FR-2012-06-15/pdf/2012-14289.pdf

State Dept and BIS Issue Proposed Rule on Transition from USML to CCL

The Bureau of Industry and Security (BIS) and the State Department issued their proposed transition plans for items transitioning from the U.S. Munitions List (USML) to the Commerce Control List (CCL), pursuant to the Obama Administration's Export Control Reform (ECR) initiative. In addition, the BIS proposed rule would:

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1. extend the validity of BIS licenses from two to four years;
2. broaden license exceptions to conform to State's International Traffic in Arms Regulations exemptions;
3. amend license exceptions for government uses and temporary exports;
4. proposed a revised de minimis rule for 600-series USML-CCL transfers; and
5. make additional changes that BIS deems necessary to implement ECR, such as changes to reporting thresholds for the Automated Export System (AES).

BIS' proposed rule would extend the validity period of BIS licenses from two years to four years, with some exceptions, unless otherwise specified on the license at the time that it is issued. BIS advised it is proposing this change because current International Traffic in Arms Regulations (ITAR) licenses are currently valid for four years, as compared to two years under the Export Administration Regulations (EAR). Exporters may request an extended validity period beyond four years; and such requests would be reviewed on a case-by-case basis, according to BIS. Highlights of the proposed changes include:

· BIS Licenses would allow direct shipments to Approved End Users.

· Changes to specific exceptions include limiting Strategic trade authorization (STA), broadening temporary imports, exports and reexports (TMP) and revise the license exception on Technology and Software- Unrestricted (TSU) to include training information in authorized operation technology, as it is in the ITAR.

· Two-Year Grace Period for ITAR Licenses, 45-day Expiration if received after rule published. Agreements also would get two years.

· Proposed export clearance related changes. These changes would affect eligibility for the AES low value exemption and post departure filing, among other things.

· Military commodities produced outside the U.S. subject to some 600 series restrictions.

Complete details of the proposed rule are posted. Comments on the BIS proposed rule and State's proposed policy statement are due by 08/06/12.
BIS proposed rule (FR Pub 06/21/12) http://www.ofr.gov/OFRUpload/OFRData/2012-15074_PI.pdf
State's proposed policy statement (FR Pub 06/21/12) http://www.ofr.gov/OFRUpload/OFRData/2012-15070_PI.pdf

State Dept and BIS Issue Proposed Rules on Definitions of Specially Designed under CCL and USML

The State Department and the Bureau of Industry Security (BIS) issued proposed rules containing their definitions of the term "specially designed' as it appears in the Commerce Control List (CCL) and the U.S. Munitions List (USML). The State and BIS proposed rules would amend the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) to create a two-paragraph, "catch and release" definition that would initially define items that are "specially designed" for military applications, then provide exceptions to prevent the definition from overreaching. BIS also issued a request for comments on the feasibility of creating an exhaustive list of controlled items instead of using the term "specially designed." Comments on both proposed rules are due by 08/03/12. Comments on BIS' request for comments on the creation of an exhaustive list are due by 09/17/12. As part of the Export Control Reform (ECR) initiative, State decided to revise the USML to make it more positive. Concurrently, State and BIS have been publishing proposed rules moving items from the USML to the CCL. BIS, however, advised it cannot immediately remove all references to the term "specially designed" and replace it with lists of specific items because multilateral export control regimes rely on the term significantly. Also, BIS noted it has not developed such lists and such an effort would take many years and require the approval of multilateral regimes. Finally, BIS will still use the term in order to avoid inadvertently de-controlling items that have been proposed to move from the USML to the CCL, because the USML relies on many catch-all controls. The BIS' 07/15/11 proposed rule included nine objectives for a revised "specially designed' definition, as follows:

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1. Preclude multiple or overlapping controls of similar items within and across the two control lists;
2. Be easily understood and applied by exporters, prosecutors, juries, and the U.S. Government;
3. Be consistent with definitions used by the multilateral export control regimes;
4. Not include any item specifically enumerated on either the USML or the CCL and, in order to avoid a definitional loop, do not use "specially designed" as a control criterion;
5. Be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls;
6. Apply to both descriptions of end items that are "specially designed" to have particular characteristics and to parts and components that were "specially designed" for particular end items;
7. Apply to materials and software because they are "specially designed" to have a particular characteristic or for a particular type of end item;
8. Not increase the current control level to "600 series" control or other higher end controls of items (i.e., not move items currently subject to a lower control status to a higher level control status), particularly current EAR99 items, which are now controlled at lower levels; and
9. Not, merely as a result of the definition, cause historically EAR-controlled items to become ITAR controlled.

BIS advised it believes this proposed definition, as well as State's companion definition meet these nine objectives

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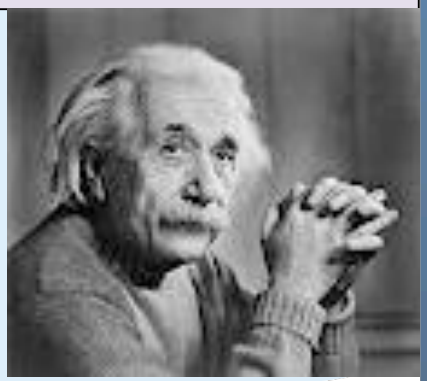
"Everybody is a genius.
But if you judge a fish on it's ability
to climb a tree, it will live it's whole life
believing that it is stupid."

-Albert Einstein



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· BIS and State are requesting comments on whether BIS' proposed definition meets the nine objectives set out in the BIS 07/15/11, proposed rule and whether this proposed definition would be consistent with the Missile Technology Control Regime's definition of "specially designed", as well as whether State's proposed definition provides a "bright line" and whether it is applicable to all USML categories, respectively.

· BIS is also requesting comments on the feasibility of positively identifying "specially designed" "components" on the CCL so as to decrease the use of the term, which appears extensively throughout the CCL, and thereby facilitate enhanced public compliance with the Export Administration Regulations (EAR). Specifically, BIS is evaluating whether it is feasible to create exhaustive lists of the "specially designed" "components" referred to in certain ECCNs on the CCL that currently use "specially designed" catch-all paragraphs, and seeks public input to assist in this evaluation.

BIS proposed rule defining "specially designed" (FR Pub 06/19/12) http://www.gpo.gov/fdsys/pkg/FR-2012-06-19/pdf/2012-14475.pdfState proposed rule defining "specially designed" (FR Pub06/19/12) http://www.ofr.gov/OFRUpload/OFRData/2012-14471_PI.pdfBIS request for comments on the feasibility of creating a list of controlled items instead of using "specially designed" (FR Pub 06/19/12)http://www.gpo.gov/fdsys/pkg/FR-2012-06-19/pdf/2012-14471.pdf

BIS Issues Final Rule Amending ECCNs to Implement Australia Group Plenary Charges

The Bureau of Industry and Security (BIS) issued a final rule to amend the Export Administration Regulations (EAR), effective 07/02/12, to implement the understandings reached at the June 2011 plenary meeting of the Australia Group. The final rule amends the following 4 ECCNs:

· ECCN 1C351 (Human and zoonotic pathogens and "toxins");
· ECCN 1C353 (Genetic elements and genetically modified organisms);
· ECCN 2B350 (Chemical manufacturing facilities and equipment); and
· ECCN 2B352 (Equipment capable of use in handling biological materials).

The Australia Group is a multilateral forum consisting of 40 participating countries that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The 2011 Australia Group changes are posted for review.
BIS FR Notice:
http://www.ofr.gov/OFRUpload/OFRData/2012-16001_PI.pdf

BIS and State Dept Issues Proposed Rules to Revise USML Cat IX and CCL for Military Training Equipment

The State Department issued a proposed rule to revise U.S. Munitions List (USML) Category IX (military training equipment and training) to change the title to indicate that the category covers training equipment only (and not "training" as a service), remove catchall categories, narrow the articles controlled on the USML, and make this list of items more positive. At the same time, BIS is proposing the creation of four new 600 series ECCNs to control articles removed from Category IX that would instead be controlled by the Commodity Control List (CCL). The State Department is not proposing any tiering at this time. Written comments on both proposed rules are due 07/30/12. As reported, in their December 2010 advanced notices of proposed rulemaking (ANPR), the State Department and BIS described the Administration's plan to make the USML and the CCL positive, tiered, and aligned so eventually they can be combined into a single control list. State noted these remain the Administration's ultimate Export Control Reform objectives, but their concurrent implementation would be problematic in the near term. As a result, the Administration decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered. The State Department's proposed rule would revise USML Category IX, covering military training equipment, to more accurately describe the articles within the category in order to establish a clear bright line between the USML and the CCL. The proposed revision would change the title of the category, remove broad catchalls (replacing them with a listing of specific materials that warrant ITAR control caught by current catchalls), move certain items to the CCL, and remove controls on all generic parts, components, accessories, and attachments. The BIS' proposed rule describes how military training equipment and related items that the President determines no longer warrant control under Category IX of the USML would be controlled under the CCL, (details posted).
State proposed rule (FR Pub 06/13/12) http://www.gpo.gov/fdsys/pkg/FR-2012-06-13/pdf/2012-14443.pdf
BIS proposed rule (FR Pub 06/13/12) http://www.gpo.gov/fdsys/pkg/FR-2012-06-13/pdf/2012-14444.pdf

Congress Gets Bill to Grant Russia PNTR Once They Join WTO

A group of lawmakers' unveiled legislation that would establish permanent normal trade relations (PNTR) with Russia and repeal the Jackson-Vanik amendment "to enable American businesses to pursue new job-creating export opportunities in Russia when it joins the World Trade Organization (WTO) this summer," according to a Senate Finance Committee press release. The legislation was introduced by Senate Finance Committee Chairman Max Baucus (D-MT.), International Trade Subcommittee Ranking Member John Thune (R-S.D.), Foreign Relations Committee Chairman John Kerry (D-MA) and Armed Services Committee Ranking Member John McCain (R-AZ). The Jackson-Vanik amendment was passed in 1974 in an effort to restrict trade with Communist countries. The legislation completes steps which are required for American businesses to capitalize on the new market access in Russia. The release reported "establishing PNTR will provide a boost to the U.S. economy, doubling American exports to Russia in just five years and helping create jobs across every economic sector – services, manufacturing and agriculture." Baucus advised "this is an opportunity to double our exports to Russia and create thousands of jobs across every sector of the U.S. economy. Baucus noted, Jackson-Vanik served its purpose during the Cold War, but it's a relic of another era that now stands in the way of our farmers, ranchers and businesses pursuing opportunities to grow and create jobs. "We owe it to American workers and businesses to enable them to take advantage of the doors opening in Russia. This bill will give our businesses and workers the level playing field they need to succeed against foreign competition." McCain also voiced support for the measure, though he added PNTR and Jackson-Vanik "must be accompanied by passage of the Magnitsky Act (S.1039)." Baucus also sent a letter to a group of Senators, who previously voiced support for PNTR for Russia, explaining his support for PNTR and the repeal of Jackson-Vanik and intent to support the Magnitsky Act. Letter posted at: http://www.finance.senate.gov/newsroom/chairman/download/?id=f9ec3aa9-dd95-4d9d-87d5-ff1b6e0cf2a0
As reported, Russia is expected to join the WTO formally this summer and will lower tariffs and increase market access for foreign businesses from countries that have permanent normal trade relations with it. Congress must pass legislation establishing PNTR by the time Russia joins the WTO for the United States to enjoy the full economic benefits. U.S. exports to Russia currently total $9 billion per year and one recent study predicted that number would double within a half-decade following PNTR. Russia is already the world's sixth-largest economy, and it could outgrow Germany and Japan by 2040.
Text of the bill: http://www.finance.senate.gov/legislation/download/?id=d4b17eb1-86aa-4802-b5dc-6c301b06493e
Senate Finance Committee press release: http://www.finance.senate.gov/newsroom/chairman/release/?id=388beba7-8eaa-482e-a970-

FDA Posts Warning on Korean Shellfish Due to Inadequate Sanitation Controls

According to the Food and Drug Administration (FSA) all fresh, frozen, canned, and processed oysters, clams, mussels, and whole and roe-on scallops (molluscan shellfish) from Korea that have entered the U.S. should be removed from sale or service. This includes molluscan shellfish from Korea that entered the U.S. prior to 05/01/12, when the FDA removed such products from the Interstate Certified Shellfish Shippers List (ICSSL), and that which may have inadvertently entered the country after that date. FDA advised these products and any products made with them may have been exposed to human fecal waste and are potentially contaminated with norovirus. FDA noted its evaluation determined that the Korean Shellfish Sanitation Program (KSSP) no longer meets the sanitation controls specified under the United States' National Shellfish Sanitation Program. The FDA's evaluation found significant deficiencies with the KSSP including inadequate sanitary controls, ineffective management of land-based pollution sources and detection of norovirus in shellfish growing areas.

According to FDA, these actions only affect molluscan shellfish harvested from Korean waters. They do not affect the receipt of fresh and frozen molluscan shellfish by distributors, retailers, and food service operators from any of the other shellfish shippers listed in the ICSSL, and do not affect the importation of canned and other processed product made with molluscan shellfish harvested from non-Korean waters. The FDA is in ongoing discussions with Korean authorities to resolve the issue.
FDA notice:
http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm308353.htm

CBP Issues Message on the continued Use of NAFTA Even Though Form Expired on 3/31/12

U.S. Customs and Border Protection (CBP) announced in a CSMS message it is aware that the most current CBP Form 434, "NAFTA Certificate of Origin," available on the CBP website lists an expiration date of 03/31/12. CBP advised despite the expiration date, the trade community may continue to use this document or a substantially similar, alternate version. CBP will post the reapproved CBP Form 434 as soon as it becomes available. CBP Form 434:
http://forms.cbp.gov/pdf/CBP_Form_434.pdf
CBP CSMS notice:
http://apps.cbp.gov/csms/viewmssg.asp?Recid=18787&page=&srch_argv=12-000208&srchtype=all&btype=&sortby=&sby

Court Issues Determination to Review CV Determination for All Other Rate on China Aluminum Extrusions

In a reversal of its previous ruling on the issue, the Court of International Trade (CIT) agreed to consider the all others rate of 137.65% from the preliminary countervailing duty (CVD) determination of aluminum extrusions from China (C-570-968), in light of the fact that, although the preliminary determination is not a final agency decision, it carries force because cash deposits are collected from the time of the preliminary determination in antidumping and countervailing (AD/CV) duty investigations. As reported, CIT had already remanded the CV final determination all others rate of 374.15% in April, which was determined on the basis of non-cooperative mandatory respondents' adverse facts available (AFA) rates, because, according to CIT, the final all others rate was unreasonable. Plaintiffs, which included four domestic importers and one exporter of extruded aluminum, requested CIT reconsider the favorable ruling because CIT, in the original ruling, noted:

I. the issue of the preliminary determination was moot, and

II. the International Trade Administration's(ITAs) decision to only rely on the mandatory respondents' AFA rates, and disregard voluntary respondents' non-AFA rates, was not contrary to law.

CIT granted plaintiffs' motion to reconsider its decision not to review the all others rate from the preliminary determination, which CIT advised it would do when it reviews the ITA's remand of the final determination, but declined to reconsider its decision that the ITA was within its rights when it disregarded individual respondents rates in its all others rates calculation.
CIT notice: Slip Op. 12-81 (06/13/12)
http://www.cit.uscourts.gov/SlipOpinions/Slip_op12/12-81.pdf

ICE Posts Information on Large Fine to Importers Falsely Classifying Goods to Reduce Duty, Pays Significant Whistleblower Settlement

Immigrations and Customs Enforcement (ICE) recently announced that a $6.3 million settlement was reached to resolve claims that companies misclassified auto parts manufactured in China and imported to the U.S. to evade $2.5 million in duties. As reported, six companies from the U.S. and China, as well as two named individuals, allegedly violated the False Claims Act by knowingly misclassifying auto manifolds to obtain a duty rate of zero, all along while charging its customers the correct duty of 2.5%, and retaining as "profit" the duty that should have been paid to U.S. Customs and Border Protection (CBP). Between June 2004 and June 2011, the U.S. alleged that the company evaded $2,549,000 worth of duties on 706 entries involving manifolds valued at $102 million. According to ICE, CMAI Industries, LLC, a Michigan limited liability company doing business as CMAI North America; China Metal Products Co., Ltd.; China Metal Automotive International Co., Ltd.; China Metal International Holdings, Inc.; CMP (Hong Kong) Industry Co., Ltd.; CMW (Cayman Islands) Co., Ltd.; Shiuh-Lung Chiang, also known as Ronny Chiang; and Ho Ming-Shiann paid the U.S. $6.3 million to resolve claims that the companies violated the False Claims Act by falsely misclassifying the auto parts. ICE reported more than $4 million of the $6.3 million paid in settlement came from assets seized during the investigation. In the related criminal case, in December 2011, CMAI North America pleaded guilty to one count of entry of goods by means of false statements. ICE advised the scheme came to the government's attention through a lawsuit that was brought under the qui tam or whistleblower provisions of the False Claims Act. The Act permits private citizens with knowledge of fraud against the government to bring an action on behalf of the United States and to share in any recovery. The whistleblower in this suit, Theodore Ludlow, received $1.2 million from the U.S.'s recovery, ICE reported.
ICE press release:
http://www.ice.gov/news/releases/1206/120608detroit.htm

Court rules that Post-Liquidation NAFTA Duty-Free Claims must be Protested

In a case involving U.S. Customs and Border Protection's (CBPs) tariff classification, and denial of eligibility for NAFTA duty-free entry, of plaintiff's candied peanuts imported from Mexico in 2007, the Court of International Trade (CIT) dismissed Rogelio Salazar Cavazos' claims regarding CBP's denial of his requested NAFTA importation duty refund claims. CIT advised it had no jurisdiction over the matter because Salazar never filed a protest with CBP over its determination of the goods' NAFTA eligibility. Salazar's HTS classification protest did not likewise cover NAFTA eligibility, and he was eligible to file a second protest, contrary to his arguments. However CIT noted, Salazar's claims challenging CBP's tariff classification of the goods does fall within its jurisdiction, because he filed a valid protest that CBP denied. CIT did not dismiss those claims. As reported,

CBP originally classified Salazar's thirteen entries of candied peanuts from Mexico under subheading 2008.11.60 of the Harmonized Tariff Schedule (HTS), dutiable at a rate of 131.8%. Salazar filed two protests of CBP's classification, saying the goods should have been classified under HTS subheading 1704.90.10, dutiable at a rate of 40%. Both protests were denied. Following liquidation of the entries, but before denial of his protests, Salazar filed NAFTA post-importation duty refund claims, asserting that the candied peanuts were originating goods eligible for duty-free status because they were made from peanuts obtained in the U.S. and remaining ingredients obtained in Mexico. Following CBP's denial of Salazar's HTS classification protest and finding the correct classification was HTS subheading 2008.11.60, CBP denied his NAFTA claims because goods classified under subheading 2008.11 from Mexico consisting, at least in part, of peanuts do not qualify for NAFTA privileges unless those peanuts were wholly obtained in Mexico. If CBP had instead found the goods to be correctly classified under HTS subheading 1704.90.10, the goods would have been eligible. Salazar did not protest CBP's denial of his NAFTA claims. Salazar argued that although he did not file a protest with CBP with respect to his goods' NAFTA eligibility, CIT nevertheless had jurisdiction because his HTS classification protest satisfied the requirement that a protest be filed. CIT disagreed, saying previous court cases had found that CBP's determinations of HTS classification and post-liquidation NAFTA eligibility determinations constituted two separate decisions that had to be protested separately. The only protests filed by Salazar did not challenge CBP's decision to deny his goods NAFTA duty-free eligibility, because at the time CBP received Salazar's protests he had not yet filed a valid NAFTA claim. Therefore, CIT advised, it had no jurisdiction over the matter. Finally, Salazar said the Port Director's failure to check the box labeled "the denial is protestable within 180 days of the date of this letter" on the NAFTA

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claims denial letter excused him from protesting the denial of his NAFTA claims. CIT once again disagreed, saying Salazar was not excused from his failure to file a protest. Therefore, CIT dismissed Salazar's NAFTA claims.

CIT notice: Slip Op. 12-82 (06/14/12)
http://www.cit.uscourts.gov/SlipOpinions/Slip_op12/12-82.pdf

House SMART Port Security Act Passed, Includes provision for Unannounced C-TPAT Audits

On June 28th, the House approved HR-4251, the Securing Maritime Activities through Risk-based Targeting (SMART) for Port Security Act, under suspension of the rules. The legislation is meant to authorize, enhance, and reform port security programs through increased efficiency and risk-based coordination within the Department of Homeland Security (DHS). Specifically, HR-4251, as amended:

- Allows U.S. Customs and Border Protection (CBP) to conduct unannounced inspections of a Customs – Trade Partnership Against Terrorism (C-TPAT) participant's security measures and supply chain security practices;
- Reduces redundancies by allowing DHS to recognize other countries' Trusted Shipper Programs, in addition to allowing the U.S. Coast Guard (USCG) to recognize other governments' or organizations' port security threat assessments;
- Seeks to improve efficiency and save taxpayer dollars by commissioning a report to study possible cost savings by having the USCG and U.S. Customs and Border Protection (CBP) share facilities, as well as requiring CBP to use standard practices and risk-based assessments when deploying assets;
- In addition, the legislation requires DHS to complete a detailed strategic plan for global supply chain security.

In January, the Obama Administration published a six-page Global Supply Chain Security Strategy. HR-4251 requires a more in-depth approach to global supply chain security with a focus on providing incentives for the private sector and measurable goals. The bill's sponsor, Rep. Candice Miller (R-MI) advised in a statement "the SMART Port Security Act enhances risk-based security measures overseas before the threat reaches our shores, emphasizes a stronger collaborative environment between CBP and USCG in sharing port security duties, and leverages the maritime security work of our trusted allies.

Text of HR-4251, which still needs Senate approval:
http://www.gpo.gov/fdsys/pkg/BILLS-112hr4251rh/pdf/BILLS-112hr4251rh.pdf
DHS press release: http://homeland.house.gov/press-release/house-passes-homeland-security-legislation-improve-maritime-security-aviation-security

Tyrannosaurus Skeleton Illegally Imported, Repatriated to Mongolia

As reported, the nearly complete skeleton of a dinosaur was recently forfeited to Immigration and Customs Enforcement (ICE). The skeleton of a Tyrannosaurus Bataar was looted from the Gobi Desert in Mongolia, and this forfeiture is the first step to the hopeful repatriation of the fossil to Mongolia. According to ICE, the skeleton was imported into the U.S. from the United Kingdom, and the customs importation documents contained several misstatements. The court documents state the Tyrannosaurus Bataar, a native of what is now Mongolia, was a dinosaur from the late Cretaceous period, approximately 70 million years ago. It was first discovered in 1946 during a joint Soviet-Mongolian expedition to the Gobi Desert in the Mongolian Ömnögovi Province. Since 1924, Mongolia has enacted laws declaring dinosaur fossils to be the property of the Government of Mongolia and criminalizing their export from the country. ICE reported that the Tyrannosaurus Bataar skeleton was imported into the U.S. from the UK on 03/27/10. Texas-based Heritage Auctions Inc. offered the Tyrannosaurus Bataar skeleton for sale at an auction conducted in New York. Prior to the sale, the Government of Mongolia sought — and was granted by a Texas Civil District Judge — a temporary restraining order prohibiting the auctioning, sale, release or transfer of the Tyrannosaurus Bataar skeleton. Notwithstanding the state court order, Heritage Auctions completed the auction and the Tyrannosaurus Bataar skeleton sold for $1.052 million, ICE reported. The sale, however, is contingent upon the outcome of any court proceedings instituted on behalf of the Mongolian Government. On 06/05/12, at the request of the President of Mongolia, several paleontologists specializing in Tyrannosaurus Bataars examined the Tyrannosaurus Bataar skeleton and concluded it is a Tyrannosaurus Bataar skeleton that was unearthed from the Western Gobi Desert in Mongolia between 1995 and 2005.
ICE press release:
http://www.ice.gov/news/releases/1206/120622newyork.htm

Ex-Im Posts Information on Availability of Long Term Fixed Rate Support for U.S. Exports

According to Ex-Im Bank's 2011 Competitiveness report to Congress, against the backdrop of the European debt crisis and tight liquidity constraints, The Export-Import Bank has shown it's ready and able to step in with its long-term, fixed rate support for U.S. exports when the private sector had withdrawn from export finance. But as reported, while the recovery continues and liquidity gradually returns to commercial markets, different competitive challenges are emerging. The report advised that significant volumes of unregulated Organization for Economic Cooperation and Development (OECD) export credit programs that fall outside the purview of the OECD rules and non-OECD export programs, such as those offered by Brazil, India, and, most prominently, China, are being "deployed strategically around the globe, in favor of foreign exporters and national champions." A conservative estimate shows that, collectively, these forms of government financing exceed all official export finance activity of the G-7 nations' export credit agencies combined. Ex-Im Bank estimates that in 2011 there was roughly $100 billion in unregulated OECD export financing and an additional $60 billion from Brazil, India, and China. Separately, Ex-Im Bank Chairman Fred Hochberg commented that American companies' ability to win foreign sales is being challenged by a "dramatic rise in official export credit financing. For the foreseeable future, our economic competitors will strongly support their companies, and industries that serve their national strategic interests." They will "continue creating their own national champions." How the U.S. responds to this trend will "determine if we can create the millions of middle class jobs our nation needs today and in the years ahead."
EX-IM press release:
http://exim.gov/about/reports/compet/documents/2011_Competitiveness_Report.pdf

BIS Issues Final Rule Amending EAR to Implement Wassenaar Changes

The Bureau of Industry and Security (BIS) issued a final rule that revises the Export Administration Regulations (EAR), effective 07/02/12, to implement the changes made to the Wassenaar Arrangement's List of Dual Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement at the December 2011 Plenary Meeting, and add Mexico as the 41st Participating State in the list of Wassenaar Arrangement members in the EAR. The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. BIS' final rule amends 47 entries on the Commerce Control List in order to:

- harmonize the CCL with changes made at the 2011 Wassenaar Plenary Meeting;
- make corresponding changes to 5 entries;
- revise 9 ECCNs to complete implementation of the 2007, 2008, and 2009 agreed revisions to the Wassenaar List of Dual Use Goods and Technologies;
- make corrections that are not part of the Wassenaar Arrangement 2011 agreements, which BIS noted are essential to the scope of control of these Wassenaar Arrangement listed items;
- implement Wassenaar Arrangement Task Force on Editorial Issues revisions that coincide with the revisions to ECCNs affected by the 2007, 2008, 2009, and 2010 Wassenaar changes; and
- make corresponding changes as a result of the changes made to the Technical Notes to Category 2 Product Group B and to ECCN 2B001.

Amended ECCNs are posted for review. In addition to the changes to the CCL, the BIS final rule amends the following sections of the Export Administration Regulations (EAR):

- 734.4 (De minimis U.S. Content)
- 738.3 (Commerce Country Chart Structure)
- 740.2 (Restrictions on all license exceptions)
- 740.7 (License Exception APP)
- 740.11 Supplement No. 1 (License Exception GOV)
- 740.16 (Additional Permissive Reexports (APR))
- 740.20 (License Exception Strategic Trade Authorization (STA))
- 742.6 (Regional Stability)
- 742.13 (Communications intercepting devices; software and technology for communications intercepting devices)
- Part 743 (Special Reporting)
- 744.9 (Restriction on Certain Exports and Reexports of Cameras Controlled by ECCN 6A003.b.4.b)

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- 746.7 (Iran)
- Part 748 Supplement No. 7 (VEU List)
- 752.3 (Eligible items)
- 770.2 (Item interpretations)
- 772.1 (Definitions of Terms as Used in the Export Administration Regulations)

According to BIS, shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on 07/02/12, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the U.S. before 08/31/12. Any such items not actually exported before midnight, on 08/31/12 require a license in accordance with this regulation.

BIS FR Notice: http://www.ofr.gov/OFRUpload/OFRData/2012-15079_PI.pdf

MARKETING EVENTS PROMOTED BY US COMMERCIAL SERVICE

1) Event: Mexico's Solar Market: Export Opportunities for U.S. Solar Companies
2) Event: SOLARCON India 2012
3) Event: 2012 Annual Association of Clinical Chemistry (AACC) Annual Meeting and Clinical Lab Expo/U.S. Commercial Service International Buyer Program
4) Event: Biotech Life Sciences Trade Mission to Australia
5) Event: Corporate Executive Office (CEO) Program at MEDICA 2012
6) Event: BIO-EUROPE 2012
7) Event: ILA Berlin Airshow 2012 (ILA 2012)
8) Event: GITEX Technology Week 2012
9) Event: 4th Shanghai International Disaster Reduction and Security Exhibition 2012
10) Webinar: Multi-Sector Trade Mission to South Africa and Zambia
11) Event: 2012 SBIR GLOBAL TRADE SUMMIT
12) Export Promotion Magazine Offers Free Korean Translation
13) Sell in 178 Countries for $499

If you have any questions about these initiatives, please contact your local U.S. Commercial Service trade specialist. To find the trade specialist nearest you please visit http://export.gov/usoffices/index.asp