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## International Business Compliance Update

The following is the export control newsletter published by Williams Mullen, covering developments in ITAR, EAR, OFAC, FCPA as well as Customs and International Trade Law. There have been many recent developments in these areas of the law including amendments to the EAR and ITAR, judicial decisions, developments in export control reform and significant new enforcement cases. We hope you find this information timely and helpful in your international business activity.

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## EXPORT CONTROLS

### *United Technologies Case – Liability From Selling Commercial Products to Military Customers*

The recent guilty plea by United Technologies subsidiary Pratt & Whitney Canada (PWC) provides further insight into the complex and troubling issue of ITAR liability that may arise from the sale of commercial products to military customers. In this case, PWC sold helicopter engines to China Aviation Industry Corporation II (CAI). A number of the engines were eventually used in the new Chinese Z-10 military helicopter. According to the Justice Department release, PWC determined that the engines did not constitute defense articles covered under ITAR since they were identical to engines PWC was supplying to CAI for commercial helicopters. However, as part of the transaction, PWC also provided Electronic Engine Control software to operate the engines, and PWC allegedly modified the software to permit the engines to be used on the Z-10 helicopters. PWC was charged with ITAR violations in connection with the sale, pleaded guilty and paid over \$75 million in penalties.

This is yet another ITAR case in which a company is charged with ITAR violations arising from transactions involving the sale of commercial items. In an earlier case, Analytical Methods, Inc., a US company, sold software to a foreign military customer. The software was dual use and not subject to ITAR, but the company made modifications to the software for the customer as part of the sale. DDTC charged that such modifications were defense services (presumably since they were performed for a military organization in connection with certain military activity), and hence subject to ITAR, and fined the company \$500,000. The takeaway here for US companies: firms should use a heightened level of care when selling commercial items to foreign military organizations. Even though such items may be purely commercial (and normally not subject to ITAR), the performance of services related to such items (integration services, installation, modification services and other routine services) could constitute a defense service that requires a TAA or other DDTC approval. The link to the Justice Department release can be found at: <http://www.bis.doc.gov/news/2012/doj06282012.htm>. The Analytical Methods, Inc. Consent Agreement can be found at: [http://www.pmdtcc.state.gov/compliance/consent\\_agreements/AnalyticalMethods.html](http://www.pmdtcc.state.gov/compliance/consent_agreements/AnalyticalMethods.html).

### *9<sup>th</sup> Circuit Decision Upholds Constitutionality of Arms Export Control Act*

The 9<sup>th</sup> Circuit recently upheld the constitutionality of the Arms Export Control Act (“AECA”), the statutory authority underlying ITAR. Chi Mak was convicted of conspiring to violate the export control laws and attempting to export a defense article to the People’s Republic of China in violation of the AECA. Mak’s brother and sister-in-law were arrested at Los Angeles International Airport while en route to Hong Kong. U.S. Government officials seized a CD from their luggage that contained export-controlled naval technology, some of which was authored by Mak. Mak appealed the convictions under various constitutional claims, including the First Amendment. The three judge panel ruled against Mak on each of his claims. Mak’s First Amendment claim was that the technical data he attempted to export was protected speech. The court said the AECA and its implementing regulations are content neutral and thus

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may regulated speech provided that they advance important government interests, which the court found were present in the instant case. The complete decision is available at: <http://www.ca9.uscourts.gov/datastore/opinions/2012/06/21/08-50148.pdf>.

## ***Export Control Reform Slowly Creeping Forward***

The Obama Administration's proposal to adopt export control reform is slowly moving ahead. Under the proposed reform, DDTC will adopt revisions to the U.S. Munitions List (USML) and transfer certain USML items to a newly established 600 Series on the Commerce Control List ("CCL") under the Export Administration Regulations ("EAR"). Both DDTC and BIS have recently promulgated a series of proposed regulations that set forth amendments to ITAR and EAR that are required to implement the reform. These include further draft revisions to numerous categories of the USML, including Category X (Personal Protective Equipment and Shelters), Category V (Explosives and Energetic Materials), Category IX (Military Training Equipment) and Category XIII (Materials and Miscellaneous Articles). (See links to the proposed regulations below.) In addition, the agencies have issued a number of proposed regulations that would facilitate the implementation of the reform amendments, including a proposed definition of the term "Specially Designed" as used in the revised USML and CCL, and a draft transition rule. The agencies are currently seeking public comments on these proposals.

The next steps in the process are for DDTC and BIS to issue draft revisions for the remaining USML Categories and request public comments, provide notice to Congress under Section 38(f) of the Arms Export Control Act, obtain legislative authority for the transfer of satellite products from the USML to the CCL, and issue all of the implementing regulations in final form. In recent public announcements, BIS officials have stated that they intend to issue the remaining draft USML Categories in late summer/fall and submit the 38(f) notification to Congress later in the fall.

Administration officials originally were aiming for the reform effort to be completed prior to the end of the year. However, they have recently changed this estimate to some time during 2013. This date could slip even further based upon comments received from industry, reaction from Congress upon receipt of the 38(f) notification and the outcome of the presidential election. While significant progress has been made toward adopting the reforms, there is no certainty that the proposals will eventually be finalized, or adopted in a form similar to the terms in the current proposals. We will keep readers advised on the progress of the reform effort in the upcoming months. A list of recent proposed regulations related to the reform effort is set forth under "Other Export Control Developments" below.

## ***DDTC Issues Final Rule Amending ITAR to Establish Exemption for Temporary Export of Chemical Agent Protective Gear and Helmets***

DDTC has amended ITAR to add an exemption for the temporary export of chemical agent protective gear for personal use (Category XIV(f)(4)). This is intended as a companion to the existing ITAR exemption for temporary exports of body armor under ITAR sec.123.17. The

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chemical agent gear exemption is available for U.S. persons for exports to countries not subject to restrictions under ITAR § 126.1 and to countries subject to restrictions under ITAR § 126.1 under specified conditions. The exemption covers one set of protective gear; the gear must be for the exclusive use of the U.S. person making the export and must be returned to the United States. If the gear is not returned to the United States with the individual who temporarily exported it, the regulation specifies certain reporting requirements that must be followed. The exemption also covers one additional filter canister. The exporter must declare the articles to a Customs and Border Protection (“CBP”) officer upon departure from the U.S., present the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System (“AES”) per ITAR sec.123.22, and the article must be presented to the CBP officer for inspection. Under this amendment, DDTC also expanded the exemption for the temporary export of body armor to cover the temporary export of one helmet covered under USML Category X(a)(6) when it is included with the body armor. These amendments contain a number of other specific conditions for use of the exemptions, and parties are advised to read the final regulation carefully before relying on the exemption to verify that the facts of their transactions fit within the terms of the exemption. The exemption is effective as of June 1, 2012. The Federal Register notice is available at: <http://www.pmddtc.state.gov/FR/2012/77FR25865.pdf>.

## ***U.S. Officials Continue Pressure On Freight Forwarders For Export Control Violations***

U.S. officials have brought yet another case against a freight forwarder for export violations. An executive of a foreign freight forwarding firm, Ulrich Davis, was recently sentenced to six months in prison for export control violations. Davis was Sales and Business Development Manager for a Netherlands-based freight forwarder, which also has a freight forwarder affiliate in the United States. Davis was alleged to have picked up and arranged transportation for US origin items on behalf of a company that was the subject of a BIS Temporary Denial Order. According to the Justice Department release, the goods were shipped to the Netherlands, transshipped, and eventually shipped to Iran. Davis was prosecuted by US officials for conspiracy to export goods in contravention of the Temporary Denial Order. Davis eventually pled guilty and was sentenced on May 15, 2012.

This is yet another case where U.S. prosecutors have brought charges against a party who facilitated a transaction by providing logistics services. This is on the heels of other recent export enforcement cases against forwarders, including FedEx Express for its freight forwarding activities (see: [http://www.bis.doc.gov/news/2012/bis\\_press01042012.htm](http://www.bis.doc.gov/news/2012/bis_press01042012.htm)), DHL (see: [http://www.bis.doc.gov/news/2009/bis\\_press08062009.html](http://www.bis.doc.gov/news/2009/bis_press08062009.html)) and a number of smaller forwarders. In the FedEx case, BIS officials alleged that FedEx, in its capacity as a freight forwarder, aided and abetted shipments by its client to parties in Dubai and other locations that were listed on a number of prohibited party lists. The charging letter stated: “Specifically FedEx caused, aided or abetted this unlawful attempted export to Mayrow by, inter alia, preparing, processing, and/or filing with the U.S. government the Automated Export System records associated with this transaction...” U.S. officials continue to emphasize the importance of export compliance at all points in the supply chain, and by all parties involved in a transaction. Justice Department releases for this case can be found at:

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<http://www.bis.doc.gov/news/2011/doj08092011.htm>,  
<http://www.bis.doc.gov/news/2012/doj02062012.htm> and  
<http://www.bis.doc.gov/news/2012/doj05152012.htm>, and the Criminal Information can be found at: [http://www.bis.doc.gov/news/2012/final\\_davis\\_information.pdf](http://www.bis.doc.gov/news/2012/final_davis_information.pdf).

## ***Forthcoming FCPA Guidance Aims to Eliminate Current Ambiguities in Law***

Later this year, the Department of Justice (“DOJ”) is expected to publish a Guidance on the Foreign Corrupt Practices Act (“FCPA”), which will update the current Lay Person’s Guide to the FCPA previously published by DOJ. In response to questions from Senate Judiciary Committee Ranking Member Chuck Grassley, an Iowa Republican, Attorney General Eric Holder recently hinted at what the new Guidance will include. Holder stated that the Guidance likely will address the definitions of “foreign official” and “facilitating payment.” Also, the Guidance likely will clarify the benefits of having a corporate compliance program in place and the elements of an effective compliance program. In addition, the Guidance likely will discuss successor liability. The Guidance is currently under review by the DOJ, the Securities and Exchange Commission and other agencies. It is not clear yet when it will be released to the public. A copy of Holder’s responses is available at:

<http://www.scribd.com/doc/99256469/DOJ-Responses-to-Senator-Grassley-Questions-Regarding-FCPA-Guidance>.

## ***OFAC - Iran Shipping Lines Advisory***

OFAC is alerting the maritime industry that the Islamic Republic of Iran Shipping Lines (IRISL) has been operating vessels despite having its flags revoked. Because of sanctions against IRISL and deceptive practices, many countries have revoked or refused to issue flags to any vessels in which IRISL or its affiliates have an interest. Officials should thoroughly analyze the documentation provided by IRISL ships to ensure that it is not expired or fraudulent. Assisting IRISL or its blocked affiliates to re-flag their vessels may be a basis for designation under Executive Order 13382, which is aimed at freezing the assets of weapons of mass destruction proliferators and their supporters and isolating them financially. The OFAC notice is available at: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120719.aspx>.

## ***OFAC Easing Underway of Financial and Investment Sanctions on Burma***

The U.S. Government has implemented a series of changes announced earlier this year to ease certain financial and investment sanctions on Burma. OFAC General License No. 16 authorizes certain exports of U.S. financial services to Burma, subject to certain limitations. OFAC General License No. 17 (G.L. 17) authorizes new investment in Burma, subject to certain limitations and requirements. The Secretary of State has waived the ban on new U.S. investment in Burma. Any U.S. individual or entity who, pursuant to G.L. 17, engages in new investment in Burma that exceeds \$500,000 will be subject to certain reporting requirements. In addition, the

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President has provided the U.S. Government the authority to impose blocking sanctions on individuals, entities and certain related parties posing a threat to Burma's peace, security or stability; involved in human rights abuses in Burma; and involved, directly or indirectly, in importing, exporting, reexporting, selling or supplying arms or related material from North Korea or the Government of North Korea to Burma or the Government of Burma. The full release is available at: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120711.aspx>.

## ***ING Bank N.V. to Forfeit \$619 Million for Illegal Transactions with Cuban and Iranian Entities***

ING N.V. has reached a settlement agreement with the Treasury Department, Justice Department, U.S. Attorney's Office for the District of Columbia and New York County District Attorney's Office to forfeit \$619 million for conspiring to violate the International Emergency Economic Powers Act and the Trading with the Enemy Act and for violating various New York state laws. This is the largest fine ever imposed on a bank in connection with U.S. sanctions violations. Between 2002 and 2007, ING was alleged to have illegally transferred billions of dollars through the U.S. financial system on behalf of sanctioned Cuban, Iranian, Burmese, Sudanese and Libyan entities. It was further alleged that ING manipulated and deleted information about these entities in thousands of transactions routed through third-party banks in the United States. The OFAC release is available at: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120612.aspx>. The BIS release is available at: <http://www.bis.doc.gov/news/2012/doj06122012.htm>.

## ***BIS Final Rule Updating Export and Reexport Controls for Rwanda and UN Security Council Arms Embargoed Countries Under EAR***

BIS has amended the EAR to implement a 2008 UN Security Council Resolution removing the arms embargo against Rwanda. Included in this amendment is the termination of sanctions against Rwanda concerning "arms and related materiel" and the removal of machetes from the Commerce Control List. BIS has also amended § 746.1(b) of the EAR to require a license to export or reexport certain items to countries subject to UN Security Council arms embargoes. This amendment imposes a presumptive denial policy for applications to export or reexport items that are controlled for UN reasons and that would contravene a UN Security Council arms embargo. The rule also clarifies the UN embargo provisions for Iraq and North Korea by including a cross reference to their respective individual sections (§ 746.3 for Iraq and § 746.4 for North Korea). The Federal Register notice is available at: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr42973.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr42973.pdf).

## ***BIS Final Rule Amending Three Existing Validated End-User Authorizations in China***

BIS has amended the Validated End-User (VEU) Authorizations for three VEUs in the People's Republic of China (PRC). BIS changed the names and approved "Eligible

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Destinations” of two entities. Hynix Semiconductor China Ltd. is now SK Hynix Semiconductor (China) Ltd. The same change was made to the approved “Eligible Destination.” Hynix Semiconductor (Wuxi) Ltd. is now SK Hynix Semiconductor (Wuxi) Ltd. The approved “Eligible Destination” was similarly changed. BIS also amended the list of “Eligible Items (by ECCN)” that may be exported, reexported and transferred (in-country) to the approved facility of VEU Boeing Tianjin Composites Co. Ltd. in the PRC. The Federal Register notice detailing the changes is available at: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr40258.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr40258.pdf).

## ***BIS Adds 16 Parties to Entity List for Providing Support to Persons Engaged Against U.S. and Coalition Forces in Afghanistan***

BIS has added four individuals and 12 companies located in Afghanistan, Pakistan and the United Arab Emirates to the BIS Entity List for providing materials used to produce improvised explosive devices (IEDs) that were employed on the battlefield in Afghanistan against US and coalition forces. BIS added 13 parties (individuals and companies) located in Afghanistan and Pakistan to the list in November 2011 on the same basis. A list of the parties added to the list as well as the complete release is available at: [http://www.bis.doc.gov/news/2012/bis\\_press04272012\\_2.htm](http://www.bis.doc.gov/news/2012/bis_press04272012_2.htm).

## ***DFARS and ITAR Interim Rules to Implement US-UK Defense Trade Treaty***

With the entry into force of the US-UK Defense Trade Treaty on April 13, 2012, previously published DFARS and ITAR interim rules went into effect. The aim of the treaty is to facilitate the trade of defense articles and services between US and UK militaries, security authorities and their industries by allowing the export of certain items without a license provided certain requirements are met. The DFARS rule published in May implements requirements that relate to exports that, for example, a prospective contractor may make under a Defense Department solicitation or that a contractor may make in performance of a Defense Department contract. The rule places the burden on program managers and contracting officers to determine whether contracts are eligible under the Treaty. The DDTC rule, amends the ITAR to implement the Treaty (ITAR § 126.17) and identifies the defense articles and services that cannot be exported under the Treaty (ITAR § 126 Supplement No. 1). The Federal Register notice for the DFARS rule is available at: [http://www.acq.osd.mil/dpap/dars/dfars/changenotice/2012/20120522/fr\\_2012-D034.pdf](http://www.acq.osd.mil/dpap/dars/dfars/changenotice/2012/20120522/fr_2012-D034.pdf). The Federal Register notice for the ITAR rule is available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-21/pdf/2012-6825.pdf>.

## ***DDTC Formatting Updates to ITAR Section 126.5 Canadian Exemption***

The Canadian Exemption, ITAR § 126.5, has been updated to reference the new Supplement No. 1 to part 126. The changes made were only to formatting; no substantive changes were made to the controls imposed under § 126.5. For the defense articles previously controlled under paragraphs (b)(1) through (21), refer to Supplement No. 1 to part 126. For the

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items previously controlled under paragraph (c), refer to Supplement No. 1 to part 126 Notes 12 and 14.

## *Updates on U.S. Policy Regarding Yemen*

U.S. policy regarding Yemen has undergone two recent changes. An executive order signed by the President provides the Treasury Department the authority to target individuals and entities posing a threat to Yemen's peace, security or stability, including those who are obstructing Yemen's democratic transition. In addition, DDTC has updated the ITAR with respect to Yemen. Licenses or other approvals for exports or imports of defense articles or services destined for or originating in Yemen will be reviewed, and may be issued, on a case by case basis. Previously, defense trade with Yemen was restricted under ITAR § 126.1. More information on these two changes is available at: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120516.aspx> and <http://www.pmdtc.state.gov/FR/2012/77FR39392.pdf>.

## *Other Export Control Developments*

### **Export Control Reform**

- BIS posts public comments received on proposed rule to add to the Commerce Control List energetic materials and related articles that the President determines no longer warrant control under the United States Munitions List: [http://efoia.bis.doc.gov/pubcomm/records-of-comments/record\\_of\\_comments\\_BIS\\_Cat\\_V.pdf](http://efoia.bis.doc.gov/pubcomm/records-of-comments/record_of_comments_BIS_Cat_V.pdf).
- BIS publishes proposed revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions after Retrospective Review: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr37524.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr37524.pdf).
- BIS and State Department publish proposed rules for "Specially Designed" Definition: BIS Proposed Rule: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr36409.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr36409.pdf); DDTC Proposed Rule: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr36428.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr36428.pdf).
- BIS publishes advanced notice of proposed rulemaking on Feasibility of Enumerating "Specially Designed" Components: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr36419.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr36419.pdf).
- BIS and State Department Publish Proposed Rules Addressing Personal Protective Equipment, Shelters, and Related Items that the President Determines no Longer Warrant Control on the United States Munitions List: BIS Proposed Rule: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr33688.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr33688.pdf); DDTC Proposed Rule: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr33698.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr33698.pdf).
- BIS publishes proposed rule Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items that No Longer Warrant Control Under the United

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States Munitions List and Items on the Wassenaar Arrangement Munitions List:

[http://www.bis.doc.gov/federal\\_register/rules/2012/77fr29564.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr29564.pdf).

- BIS and State Department publish proposed rules addressing energetic materials and related articles that the President determines no longer warrant control on the United States Munitions List. The comment period for both rules closes on June 18, 2012: BIS Proposed Rule: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr25932.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr25932.pdf); DDTC Proposed Rule: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr25944.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr25944.pdf).
- BIS publishes a final rule Revisions to the Export Administration Regulations (EAR): Export Control Classification Number 0Y521 Series, Items Not Elsewhere Listed on the Commerce Control List (CCL): [http://www.bis.doc.gov/news/2012/final\\_77fr22191.pdf](http://www.bis.doc.gov/news/2012/final_77fr22191.pdf).
- DDTC proposed rule defining “specially designed” has been published in the Federal Register: <http://www.pmddtc.state.gov/FR/2012/77FR36428.pdf>.
- DDTC proposed rule to revise Category IX, military training equipment, of the U.S. Munitions List (USML) to describe more precisely the materials warranting control on the USML: <http://www.pmddtc.state.gov/FR/2012/77FR35317.pdf>.
- DDTC public comments received regarding proposed revisions to ITAR Category V have been posted: [http://www.pmddtc.state.gov/regulations\\_laws/documents/proposed\\_rules/CategoryV\\_Comments.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/proposed_rules/CategoryV_Comments.pdf).
- DDTC proposed rule to revise Category IX, military training equipment, of the U.S. Munitions List (USML) to describe more precisely the materials warranting control on the USML: <http://www.pmddtc.state.gov/FR/2012/77FR35317.pdf>.
- DDTC proposed rule to revise Category X, personal protective equipment and shelters, of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML: <http://www.pmddtc.state.gov/FR/2012/77FR33698.pdf>.
- DDTC proposed rule to revise Category XIII, materials and miscellaneous articles, has been published in the Federal Register: <http://www.pmddtc.state.gov/FR/2012/77FR29575.pdf>.
- DDTC proposed rule to revise Category V, explosives and energetic materials, propellants, incendiary agents, and their constituents, has been published in the Federal Register: <http://www.pmddtc.state.gov/FR/2012/77FR25944.pdf>.

## BIS

- Final rule published to implement Wassenaar Arrangement 2011 agreements: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr39353.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr39353.pdf)
- Final rule published to implement Australia Group 2011 agreements: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr39162.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr39162.pdf)
- Temporary Denial Order issued for re-Export of U.S. aircraft to Iran: [http://www.bis.doc.gov/news/2012/bis\\_press04272012.htm](http://www.bis.doc.gov/news/2012/bis_press04272012.htm)
- Addition of certain persons to Entity List: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr25055.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr25055.pdf)
- Temporary Denial Order issued for re-export of U.S.-origin aircraft to Iran: [http://www.bis.doc.gov/news/2012/aban\\_air\\_TDO\\_04232012.pdf](http://www.bis.doc.gov/news/2012/aban_air_TDO_04232012.pdf)

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- Final rule published on addition of certain persons to Entity List: Addition of persons acting contrary to the national security or foreign policy interests of the United States: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr23114.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr23114.pdf)
- Proposed rule published for revisions to Authorization Validated End-User Provisions: Requirement for notice of export, reexport or transfer (in-country) and clarification regarding termination of conditions on VEU Authorizations: [http://www.bis.doc.gov/federal\\_register/rules/2012/77fr22689.pdf](http://www.bis.doc.gov/federal_register/rules/2012/77fr22689.pdf)

## DDTC

- Guidance regarding licensing with United Technologies Corporation Subsidiaries: [http://www.pmddtc.state.gov/licensing/documents/UTC\\_Guidance.pdf](http://www.pmddtc.state.gov/licensing/documents/UTC_Guidance.pdf)
- Notice published regarding Pratt & Whitney Corporation: <http://www.pmddtc.state.gov/FR/2012/77FR40140.pdf>
- Update to COMSAT programs approved for purposes of 22 CFR 123.27: [http://www.pmddtc.state.gov/licensing/commercial\\_satellites.html](http://www.pmddtc.state.gov/licensing/commercial_satellites.html)
- Update to list of UK Intermediate Consignees: <http://www.pmddtc.state.gov/treaties/index.html>
- Final Rule amending ITAR regarding Sri Lanka: <http://www.pmddtc.state.gov/fr/2012/77FR16670.pdf>

## OFAC

- OFAC introduces new SDN data production system: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120613.aspx>
- Transnational Criminal Organizations Designations: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120606.aspx>
- Anti-Terrorism Designations; Anti-Narcotics Designations Removals; Kingpin Act Designations: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120524.aspx>
- Executive Order on foreign sanctions evaders with respect to Syria and Iran: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120501.aspx>
- Syria General License 4A issued: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120427.aspx>
- Anti-Terrorism Designations Removals; Anti-Terrorism Designation Updates; Anti-Narcotics Designations Removals: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120419.aspx>

## CUSTOMS AND TRADE LAW

### *Bipartisan Senators Seek to Amend the Miscellaneous Tariff Bill Process*

Through a bill entitled the “Temporary Duty Suspension Process Act of 2012,” Senators Rob Portman, an Ohio Republican, and Claire McCaskill, a Missouri Democrat, are seeking to amend the process for drafting the Miscellaneous Tariff Bill (“MTB”). The MTB temporarily suspends import duties on certain items manufactured outside the United States. The Senators say that the current process is very political and is not transparent. Under the current system, companies must get a lawmaker to introduce legislation to suspend duties on a particular product. Congress then sends that individual bill to the U.S. International Trade Commission (“ITC”), which evaluates it to determine if it will become part of the larger MTB package. The House Ways and Means Committee and the Senate Finance Committee then bundle the bills that qualify into the MTB. The proposed bill from Senators Portman and McCaskill would allow companies to go directly to the ITC to request duty suspensions. The bill also would provide for public notice and comment during the process. Based on the requests and comments that it receives, the ITC would draft a bill, which would be submitted to the House and Senate Committees.

### *House Likely Will Vote on Another Amendment to Lacey Act This Month*

Introduced by Representative Jim Cooper, a Tennessee Democrat, another bill to amend the Lacey Act is now before the full House, where a vote is expected later this month. The Lacey Act initially was intended to prevent shipments of endangered animal species, but amendments in 2008 added a much broader range of plants and plant by-products. The House bill, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act, better known as the RELIEF Act (H.R. 3210), would limit the application of the Lacey Act in certain scenarios. For example, the RELIEF Act would limit the scope to plants and plant products imported after the date of enactment of the amendment. It also would increase property owners’ ability to defend their rights to imported property seized under the Lacey Act. In addition, the RELIEF Act would focus the prohibition against importing wood products harvested in violation of “foreign law” only on foreign law that is “directed at the protection, conservation, and management of plants.”

### *Deadline for 100% Scanning Passes*

As many anticipated, the U.S. Government missed the July 1 deadline for ensuring that 100% of shipping containers bound for the United States are scanned for radioactive materials before they reach the United States. Certain 2007 amendments to the Security and Accountability For Every Port (“SAFE Port”) Act of 2006 imposed this deadline, based on 9/11 Commission findings showing a vulnerability in detecting nuclear devices in shipping containers.

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Janet Napolitano, Secretary of the Department of Homeland Security, informed Congress in May that she would extend the deadline for meeting the 100% goal by two years. She said that such an extension was necessary due to the tremendous cost and burden of meeting the goal.

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