



Trade World UTAH

July 2006

EVENT! July 11- Selling Medical Equipment to Brazil

This webinar will provide answers to these questions by providing a highly focused, interactive seminar in a "virtual classroom" setting that covers distribution, marketing, and regulatory issues related to selling medical equipment in Brazil, including: a market overview, best prospects, comprehensive review of the regulatory approval process, U.S. company sharing best practices, and, an electronically delivered resource guide that will supplement the information presented during the webinar. The registration fee to participate in this valuable webinar is only \$75. To register, go to http://www.buyusa.gov/arizona/selling_medical_equipment.html.

EVENT! July 13- China IPR Webinar Series

China IPR Webinar Series: On July 13 12:00pm – 1:30pm (MST), the China IPR webinar series will continue with a program on " Industry Organizations: Innovative Programs to tackle China IPR Issues." The webinar will include presentations by industry organizations on programs to aid members protect their IP in China and direct China toward a better enforcement system. To register, please email your contact information to CHINAIPR@NOSPAM.mail.doc.gov2 . The program is free and is part of an ongoing series running from May until December. Past Programs are available on http://www.stopfakes.gov/events/china_webinar_series.asp.

EVENT! July 19- ASEAN Ambassador Business Conference

Governor Huntsman is proud to host a delegation of ambassadors and trade representatives from the Association of Southeast Asian Nations (ASEAN) 18-20 July 2006. As the main event for this visit, the governor will hold a business conference July 19th. Governor Huntsman will speak along with delegation members on business opportunities in ten Southeast Asian countries, and one-on-one meetings will be available for Utah businesses to meet directly with ambassadors or trade representatives. This is a rare opportunity to learn about this dynamic and growing region of 500 million people. You will learn what companies need to know to enter and succeed in these markets.

When: July 19, 2006, 8:00 am - 4:30 pm

Where: Grand America Hotel, Imperial Ballroom

Purpose: Provide Utah companies the opportunity to better understand the markets of Southeast Asia and make key contacts to enter and succeed in this region.

Conference Agenda:

8:00-8:30 am Registration

8:30-9:00 am Welcome and keynote address from Governor Huntsman

9:00 am -12:30 pm Presentations from ambassadors and economic representatives on the economic and political landscape of their respective countries
12:30-1:30 pm Lunch
2:15-4:30 pm Prescheduled one-on-one meetings for Utah businesses

Cost: \$25

RSVP: If you would like to attend the conference, please call 801-538-8714. Registration deadline is July 14.

One-On-One Meetings: To schedule a one-on-one meeting between your business and the representatives from a particular country, please contact Justin Hansen with your request at jchansen@N0SPAM.utah.gov. Spots are limited.

EVENT! July 20- Legal Aspects of Doing Business in Mexico

The US Commercial Service in Mexico invites you to join the tenth installment of our monthly webex series. This month's topic is "Legal Aspects of Doing Business in Mexico". The session will take place on Thursday July 20, 2006 at 10:00 am (MST).

In this session Attorney & Abogado, Jorge G. Santistevan, from Santistevan Abogados SC, in Mexico City, will provide you with the basic legal aspects on how to do business in Mexico, how to create on your own a new company (wholly owned by U.S. entity), which are the different ways of Joint Venturing in Mexico, and provide you with some labor considerations for planning your corporate structure. Our goal is to give you the basic legal information to do business with Mexican companies in order to be more competitive in your market.

To obtain the outline of this presentation and to register, please click here:
https://www.buyusa.gov/mexico/en/sharing_more_than_a_border.html

Missed Our Previous Webinars? You Can Now Watch Them at Your Convenience!

The U.S. Commercial Service (CS) webinars and video market briefs will take you away to Vietnam, China, India and other markets – to evaluate how your company can generate new sales. The U.S. Commercial Service of the Department of Commerce, in cooperation with National Association of Manufacturers, created a Webinar series to introduce profitable new markets to small and medium sized businesses. These webinars include: Selling to Vietnam – 25 Hot Manufacturing Sectors, Capitalizing on CAFTA-DR, South Africa – Alive with Opportunities, Opportunities in China, Opening Markets in India, and Strategic Exporting 101 are now archived and can be found on our website, <http://www.export.gov>. In addition, the following videos are archived online: Israel, Russia's Regions, South Africa, China, Chile Free Trade Agreement, Singapore Free Trade Agreement and others. All future webinars will be archived at this site as well. To watch them at your convenience at your office or from the comfort of your home, go to: <http://www.globalspeak.com/html/export-gov/webcasts.asp>.

Azerbaijan: July's Market of the Month

With a population of a little over eight million, the Republic of Azerbaijan offers a small but fast developing market that has shown impressive, sustained economic growth. Azerbaijan, which gained independence from the former Soviet Union in 1991 and continues its integration with the world economy, is now attracting billions in foreign investment, particularly from companies seeking to gain a

market presence in the oil rich Caspian region. The country's second largest sector is agriculture. Learn more about opportunities in Azerbaijan today: http://www.export.gov/articles/Azerbaijan_MoM.asp.

U.S.–Brazil Commercial Dialogue Launched

During a four-day visit to Brazil, Secretary of Commerce Gutierrez initiated a new Commercial Dialogue with this important Latin American trading partner.

The U.S.–Brazil Commercial Dialogue was officially launched on June 6, 2006, in Rio de Janeiro when U.S. Secretary of Commerce Carlos M. Gutierrez met with Brazilian Minister of Development, Industry, and Trade Luiz Furlan. The goal of this dialogue is to stimulate bilateral trade and investment, with a focus on improving the competitiveness of each country.

Implementing a Presidential Initiative

The Commercial Dialogue is a direct result of meetings between U.S. President George W. Bush and Brazilian President Luiz Inácio “Lula” da Silva in November 2005. At those meetings, the two leaders made a commitment to strengthen the bilateral relationship between the two countries through a new government-to-government dialogue on improving their commercial relationship.

“The establishment of this Commercial Dialogue with Brazil is a priority for the Bush administration,” said Gutierrez. “We are working hard with our Brazilian counterparts to ensure that this Commercial Dialogue delivers concrete steps to make both of our nations more competitive in the global economy. By making it easier to conduct trade and investment between our two countries, we can create a win-win situation for both Brazil and the United States.”

A Wide-Ranging Focus

The U.S.–Brazil Commercial Dialogue will be a government-to-government initiative that works closely with the private sectors of both countries. At least once a year, both governments intend to meet at the ministerial level to carry the agenda forward.

Among the key issues that the Commercial Dialogue will address are the following:

- **Business facilitation.** Topics for future discussion will include regulatory practices, business registration, and strategies to move goods quickly and efficiently across borders.
- **Export and investment promotion.** The Department of Commerce and its Brazilian counterpart, the Ministério do Desenvolvimento, Indústria e Comércio Exterior, agreed to exchange information and experiences on the collection, classification, and distribution of statistical data on international trade in services.
- **Intellectual property protection.** Brazil and the United States will promote enhanced technical cooperation on patents and trademarks. The goal, according to Gutierrez, will be an “intellectual property violations-free environment.”
- **Standards.** The minister and secretary agreed to promote cooperation on standards, conformity assessment, and technical regulations by enhancing cooperation and information sharing between the standards-setting organizations of both countries, as well as among other interested private-sector parties.

“The partnership we enjoy with Brazil is strong, but we are always looking for ways to make it even better,” continued Gutierrez. “By working together to facilitate business and support entrepreneurship and innovation, the United States and Brazil can increase our commercial ties and build a competitive platform for the Americas.”

Top 10 Markets for U.S. Exporters in Brazil in 2005 (in millions of dollars)

1. Computer accessories \$1,318
2. Civilian aircraft engines \$1,162
3. Organic chemicals \$945
4. Civilian aircraft parts \$860
5. Semiconductors \$692
6. Plastic materials \$633
7. Fertilizers \$543
8. Pharmaceuticals \$470
9. Telecommunications \$445
10. Excavating machinery \$427

Source: U.S. Census Bureau, Foreign Trade Statistics, “U.S. Exports to Brazil from 2001 to 2005, by Five-Digit End-Use Code.”

Trade Mission to India Scheduled for November 2006

On June 22, 2006, Under Secretary of Commerce for International Trade Franklin L. Lavin announced that he will personally lead a large business development mission to India from November 29 through December 4, 2006. Geared for U.S. companies ready to make sales in India, the trade mission will begin with a two-day business summit in Mumbai on November 30 and December 1. After the summit, U.S. companies can participate in spin-off missions to one of six cities—Bangalore, Kolkata, Chennai, Hyderabad, Mumbai, or New Delhi—led by the U.S. and Foreign Commercial Service. These missions will include market briefings, networking receptions, and one-on-one business appointments. Participants in the trade mission will have access to India’s high-level business, industry, and government representatives. Participants will also have opportunities to gain insights into the country’s trade and investment climate during strategic breakout sessions and one-on-one appointments with prospective agents, distributors, partners, and end-users. India is the world’s fastest-growing free-market democracy, and it presents lucrative opportunities for all types of businesses, especially U.S. companies. In 2005, U.S. merchandise exports to India were almost \$8 billion, nearly double the amount in 2002. To receive more information about the trade mission or to register, visit <http://www.export.gov/indiamission>.

North American Competitiveness Council Launched

U.S. Secretary of Commerce Carlos M. Gutierrez, Mexican Minister of Economy Sergio Garcia de Alba, and Canadian Minister of Industry Maxime Bernier met with North American business leaders in Washington, D.C., on June 15, 2006, to officially launch the North American Competitiveness Council (NACC). The council is composed of high-level business leaders from each of the three North American Free Trade Agreement (NAFTA) partners. Each country’s delegation consists of 10 members who will meet annually to provide recommendations and priorities on promoting North American competitiveness globally. In addition, the governments will work with the council to remove barriers to increase the competitiveness of North American firms in the global marketplace and to spur economic growth.

The NACC grew out of a commitment made during the March 2006 meeting of NAFTA heads of state in Cancún, Mexico. It is part of the agenda for the Security and Prosperity Partnership (SPP) of North America, which was launched in March 2005. The SPP is meant to reduce trade barriers and to facilitate economic growth, while improving the security and competitiveness of the three North American partners. The security and prosperity ministers from all three countries are scheduled to hold a meeting with the NACC in early fall 2006 to discuss priorities and to consider new initiatives. For more information, go to the SPP Web site: <http://www.spp.gov>.

How Latest C-TPAT Changes for Carriers Could Affect Import-Export Schedules

Customs & Border protection (CBP) has long said that its flagship Customs-Trade Partnership Against Terrorism (C-TPAT) program is a “work in progress.” For their part, import pros have been frustrated by a continually moving target of standards they must meet—often retroactively after they have already become members. This reality is further driven home by the most recently announced changes to the program.

One change is CBP’s just-published “C-TPAT Supply Chain Security Best Practices Catalog,” a 48-page booklet that puts in writing for the first time the actual criteria C-TPAT importers must adhere to. A second change is the posting—on March 1 and 13, 2006—on the CBP web site of new, much stiffer minimum-security standards for highway carriers, ocean carriers, and port facilities that are already C-TPAT members. While these latest changes do not directly affect C-TPAT importers, the indirect impact is quite significant, and affects U.S. exports to Canada as well (see below).

Impact on FAST Clearance?

For example, the new rules—effective immediately as of the dates of posting—make more likely the revocation of a truck or ocean carrier’s C-TPAT status for noncompliance because they are more demanding. These new requirements place much greater responsibility for the “upstream” security of the carriers’ business partners on the carriers themselves. In the case of truckers, the responsibility goes all the way to the loading docks and factory doors and requires written verifications. Of particular concern are expedited trans-border truck shipments on the U.S. northern and southern land border (i.e., NAFTA trade operations), facilitated in the case of the northern border through the joint U.S.-Canada Free and Secure trade (FAST) program. Eligibility for participation in FAST is tied to C-TPAT membership, so if a carrier’s membership in the latter is revoked, its clients could find their imports suddenly slowed to a crawl, which will wreak havoc with manufacturing or distribution schedules and endanger customer relations.

Impact on Importers and Exporters

Almost simultaneously, Canadian Customs announced that soon Canadian importers participating in its C-TPAT equivalent program (Partners in Protection—PIP) will have to ensure that their carriers and drivers are members in good standing of C-TPAT, PIP, and FAST. Noncompliance found during a review could result in suspension or loss of crucial FAST privileges. Since PIP is mainly directed at U.S. exporters shipping to Canada, the issue affects U.S. export as well as import pros. The changes also raise the question of the degree to which it is accurate to continue to call C-TPAT a voluntary program because membership in good standing increasingly becomes a virtual license to conduct business competitively.

New C-TPAT Highway Carrier Criteria

The new security criteria for highway carriers became effective as of March 13, 2006, according to a phased implementation schedule that applies to all U.S./Canada and U.S./Mexico C-TPAT highway carrier members. (Highway carriers who apply to join C-TPAT after March 13 must meet or exceed the security criteria before they will be certified and eligible for benefits.)

Highway carriers will have 180 days from March 13, 2006 to implement the criteria elements in three phases:

Phase 1. Hardening of the physical supply chain: 60 days from March 13 to address conveyance security (seals, trailer security); physical access controls (employees, visitors); and physical security (fencing, lighting, parking).

Phase 2. Internal/procedural elements: 120 days from March 13 to ensure compliance with personnel security (background checks, employee hiring); procedural security (documentation, manifesting procedures); security training and threat awareness; less than truck load (LTL); and information technology security (passwords, FAST).

Phase 3. Business partner verifications: 180 days from March 13 to ensure compliance with new C-TPAT business partner requirements, including providing written certification that these security criteria have been met by upstream partners. CBP will use validations to gauge whether or not highway carriers have adopted these criteria, with those deemed to be deficient subject to benefits suspended or removal from C-TPAT. Highway carriers failing to meet the security criteria will immediately lose FAST program benefits. The full text of the new criteria is available at:

http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/security_criteria/hwy_carrier_criteria/hwy_carrier_criteria.xml.

C-TPAT Ocean Carriers

The new C-TPAT sea carrier criteria became effective March 1, 2006. (Any new sea carrier applying to C-TPAT after this date must demonstrate it is meeting or exceeding the criteria to join). Sea carriers have 90 days from March 1 to meet the new requirements, including: business partner requirements; container security (seals, container inspection); physical access controls (boarding-disembarking); personnel security (background checks, crew control); procedural security (passenger and crew, manifesting procedures); security training; physical security; information technology (password, accountability); and security assessments, response, and improvements. Full text is available at:

http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/security_criteria/sea_carrier_criteria.

*Reprinted with permission from the June 2006 Edition of IOMA's "Managing Exports & Imports." A Primer on Deemed Exports and Eight Best Practices to Stay Compliant At the Western Regional conference of the American association of Exporters & Importers (AAEI: <http://www.aaei.org>12), a panel on the deemed exports regulations not only covered the ABCs of the rule and the recent stepped-up enforcement of its provisions, but also featured a presentation of compliance best practices.

Michael Hoffman, Director, Western Region, Bureau of Industry & Security (BIS) provided attendees with a comprehensive background on the deemed export rule and an update of recent enforcement. "The Export Administration Regulations" explains Michael Hoffman, "defines a deemed export as the release of technology or source code subject to the EAR to a foreign national in the United States." Such a release is "deemed" to be an export to the home country of the foreign national. The regulation will be found in EAR Section 734. (b)(2)(ii). "Common situations or scenarios that can involve release such as technology or software," says Hoffman, "include: tours of laboratories; foreign national employees involved in certain research, development; foreign students or scholars conducting research; or hosting of foreign scientist(s)."

Hoffman explains, "any foreign national is subject to the deemed export rule with three exceptions, "a foreign national granted U.S. citizenship; a foreign national granted permanent- resident status (Green Card holder); and a foreign national granted status as a 'protected individual' under 8 U.S.C. 3 4b(a)(3), which includes political refugees and political asylum holders."

Under current policy, a foreign national's most recent citizenship or residency is used to determine licensing requirements. However, BIS proposed, in March 2005, to change this policy to a foreign national's country of birth. This proposed rule making ignited a firestorm of protest from the trade (and academia) and is still under review. Trade compliance pros take note: nearly 60% of deemed export licenses processed by BIS in 2005 were for nationals of the People's Republic of China (PRC).

Not all technology or source code is subject to the rule—only that subject to the EAR. “Exempted,” says Hoffman, “is technology or code that is publicly available, fundamental research published and shared within the scientific community (however, there is no blanket exemption for all information transferred in the context of such research), educational information, or publicly available patent information.”

What is controlled under the deemed export rule? “Sensitive technologies are controlled, based on specific ECCNs (export control classification numbers) contained in the Commerce Control List,” notes Hoffman. “Such controlled technologies may require an export license based on the foreign national's country of origin,” he explains.

Eight Deemed Export Best Practices

Carol Fuchs, international trade counsel at Tyco International. Tyco is a major importer-exporter, with some 60,000 employees in over 100 countries, so deemed export compliance is a major challenge. Fuchs' presentation of best practices for deemed exports compliance is summarized as follows:

1) Classify your items, technology, software. “Classify using either the U.S. Munitions List (USML) or by export control classification number (ECCN),” says Fuchs. “Classification should be: by trained experts, either internal or external; maintained in a database/matrix with audit trail and controlled access (control information both as it is posted and as it is accessed on it systems)

2) Use automated systems that require classification. “Orders cannot be processed unless items are classified,” says Fuchs. “Items cannot ship unless they are classified,” she adds. “Be warned, however, that it is harder to ‘catch’ technology than goods or equipment,” Fuchs notes.

3) Expand database/matrix to include “intangibles” (technology, software). “Often, classification of technology/ software is related to classification of underlying tangibles,” notes Fuchs, “but not always.” She emphasizes, “don't forget about drawings!”

“If none of your items are ITAR (International Traffic in Arms Regulations)-controlled and all your EAR-controlled items and technology are EAR99,” says Fuchs, “you have a limited risk of deemed exports.” (EAR99 is a classification indicating that a particular item is subject to the Export Administration Regulations (EAR) but not listed with a specific ECCN on the Commerce Control List—and does not largely require an export license unless exported to a short list of sanctioned countries [denied parties/entities].)

4) If you have technology that is subject to ITAR or EAR classified as other than EAR99, then: look at who has access, and either limit access or obtain a license. “In addition to direct access,” notes Fuchs, “also control access to information posted on the [company's] internal Internet.”

5) Control access by new hires. “It is legal to ask nationality when hiring if there are potential deemed exports issues,” she explains (exception to Title VII). “If a position involves work with technology controlled for the potential new hire's home country, either don't hire or apply for a license,” advises

Fuchs. “There can be potential deemed export issues even for EAR99 items in the case of a sanctioned/boycotted country (e.g., Syria, Cuba),” she cautions.

6) Control employee access. “If a user of the internal server indicates they are in a country or a foreign national from a country that is restricted, access is automatically blocked—or the system asks additional questions,” Fuchs suggests. Questions may include: “is the requester located in the United States? Is the requester a U.S. citizen or permanent resident? Is the person located in, or a citizen of, a country of concern?” She explains, “Responses to those questions” can result in the following actions: access granted; TSR exception—letter of assurance required (person acknowledges receiving controlled data; agrees not to send, transfer, or transmit it to specified countries; provides electronic signature for recordkeeping—then access is granted; or, license required (person agrees to provide additional information—access denied until license obtained).

7) Control visitor/potential customer access. “Determine nationality of visitors, limit access as appropriate, and obtain licenses if necessary,” Fuchs advises. “Be particularly careful about plant visits, sales presentations, trade shows, and marketing literature,” she emphasizes, “and remember this applies to both your U.S. and non-U.S. facilities.”

8) Make sure your deemed exports compliance program includes: top-management support; documented procedures; training; periodic audit (corrective action reported, documented, and implemented); and voluntary disclosures if appropriate.

*Reprinted with permission from the June 2006 Edition of IOMA's "Managing Exports & Imports."