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Senate Armed Services Committee Releases Final Report on Counterfeit Electronic Parts in the Defense Supply Chain

Government Contracts Client Alert

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After a year-long investigation that involved the review of more than 100,000 pages of documents submitted by DoD, electronic parts manufacturers, defense contractors and subcontractors, electronic parts testing laboratories and parts distributors, the Senate Armed Services Committee (SASC) published its final report on May 21, 2012. The SASC also interviewed dozens of individuals and held a full committee hearing in November 2011.

The SASC found that most counterfeit parts originate in China, the United Kingdom and Canada, and that DoD lacks knowledge of the scope and impact of counterfeit parts. The use of counterfeit parts compromises systems performance and reliability and can endanger the safety of military personnel. As General Patrick O'Reilly, the Director of the Missile Defense Agency said:

A counterfeit part may pass all production testing. However, ...the part [may have been] damaged during its unauthorized reprocessing causing the deployed system to fail...reliability may be affected because a counterfeit part may be near the end of its useful life when it is installed.

The SASC also found that most counterfeit parts are supplied by independent distributors and that testing regimens vary so much that vulnerabilities can be exploited by counterfeiters. It also determined counterfeit parts reporting to DoD and criminal authorities by the defense industry was weak.

Legislation included in the Fiscal Year 2012 National Defense Authorization Act seeks to target the problem of counterfeit parts by:

- Enhancing the inspection regime for imported electronic parts and authorizing government and manufacturers to share information to identify counterfeits
- Requiring the use of OEM's, authorized distributors and trusted suppliers
- Requiring defense contractors to establish policies and procedures to inspect and test electronic parts
- Requiring mandatory written notification of counterfeit parts to the government
- Requiring contractors to pay the costs of replacing suspect parts

It is very important that defense contractors at every level of the supply chain implement an effective counterfeit parts prevention program to avoid the introduction of counterfeits into DoD systems. Failure to implement robust countermeasures could not only lead to termination for cause but could give rise to civil and even criminal charges under the False Claims Act. Standard contract clauses call for the use of only new and unused electronic parts. Even negligently supplying counterfeit parts and then submitting invoices based on the cost of new parts could lead to serious legal issues. Since the counterfeit part problem is driven by the obsolescence of original parts (which are often not manufactured after 18-24 months), companies should also incorporate an obsolescence mitigation plan into its counterfeit parts prevention program.

A link to the full report is available [here](#).