

BRIEFINGS

ROUTING SLIP

EXPRESS COURIER LIABILITY

The Court of International Trade (CIT) has ruled that UPS Customhouse Brokerage failed to exercise "responsible supervision and control over its customs business" as required under 19 U.S.C. § 1641 by failing to follow Customs guidance and training in the misclassification of certain electronics. Of particular interest, the ruling discusses Customs guidance that a particular classification (8473.30.9000) is "usually never correct," and that UPS had removed it from its electronic HTSUS so it could not be used. U.S. v. UPS Customhouse Brokerage, Inc., CIT Slip Op. [08-60](#) (May 28, 2008).

REASONABLE CARE

Culminating a long series of proceedings, the CIT has found that an importer failed to exercise reasonable care by failing to follow its attorney's advice to seek a binding classification ruling. The CIT explained the importer was under an obligation to actively pursue the issues raised by its attorneys, and the failure to do so was negligence. The CIT also reminded that responsibility for correct classification lies with the importer. U.S. v. Optrex America, Inc., CIT Slip Op. [08-63](#) (June 9, 2008).

C-TPAT FOR EXPORTERS

The C-TPAT program director recently announced that Customs plans a small test of C-TPAT for exporters in late 2008.

2008 SEMINAR SCHEDULE

- We have scheduled three more Advanced Seminars for Fall 2008:
 - **Oct. 21-22** – Valuation
 - **Nov. 12-13** – Classification
 - **Dec. 9-10** – Exports
- Our client-only, free seminars for Summer 2008:
 - **July 15-16** – FTZs (waiting list only)
 - **Aug. 12-13** – Import/Export 101
- More information is available on our web site. All seminars are on a first-come, first served basis. Register now by e-mail to Jackie Davis at jdavis@millerco.com.

10 + 2

- Customs has completed review of the comments on the "10+2" Proposed Rule, taking us one step closer to the issuance of the Final Rule. Clients should be preparing to comply.
- Customs has [posted](#) nine draft transaction sets for the proposed 10 + 2 security filing, including entry summary, cargo release, and foreign-trade zones. These documents can be very useful in interpreting the requirements and building robust procedures.

EXPORT CLASSIFICATIONS

Census has posted a list of 179 Harmonized Tariff Schedule (HTS) numbers that were invalid, effective May 1, 2008, for use in exporting by either the Automated Export System (AES) or the paper Shipper's Export Declaration (SED).

FOREIGN TRADE REGS

- After more than 3 years' delay caused by an inter-agency dispute, the Census Bureau has finally issued its Foreign Trade Regulations Final Rule. Besides making Automated Export System (AES) reporting mandatory, the rule increases penalties up to \$10,000 per violation and 5 years jail time, formalizes the Voluntary Self-Disclosure procedure, and extends the moratorium on new Option 4 (post-departure) authorizations. The Final Rule is effective July 2, 2008, but there will be a 90-day "informed compliance" period to October 2, 2008, after which full enforcement will begin. The firm has a summary memo, and Census has created an informative [webpage](#), including Frequently Asked Questions. 73 Fed. Reg. [31548](#) (June 2, 2008). Please contact Mark Teerink with questions.
- Customs has announced that it will implement its mandatory, electronic pre-departure cargo information filing requirements for vessel, air, truck, and rail carriers on September 30, 2008. 73 Fed. Reg. [32466](#) (June 9, 2008).

CAFTA-DR

Customs has issued an Interim Rule to amend the Customs Regulations to implement CAFTA-DR. The Rule includes certification requirements and special rules for regional value calculation, accessories, spares, and kits. Comments are due August 12. 73 Fed. Reg. [33673](#) (June 13, 2008).

2008 FARM BILL

Several key trade-related provisions were included in the newly-passed 2008 Farm Bill.

- A two-year moratorium on Customs review of the so-called "First Sale Rule." Some reporting requirements are permitted.
- The Caribbean Basin Trade Partnership Act has been extended to September 30, 2010.
- Additional ethanol duties under HTSUS subheadings 9901.00.50 and 9901.00.52 are extended until January 1, 2011, and drawback claims for the additional duties, and substitution drawback claims currently permitted, are disallowed after September 20, 2008.
- Customs User Fees and Merchandise Processing Fees were extended until November 14, 2017.
- USDA and DHS organizational restructuring is to be reviewed, and AQI oversight by USDA will be enhanced.
- Subsidies in the Farm Bill are above levels in current World Trade Organization Doha Round negotiations.

WTO TECHNOLOGY TARIFFS

The U.S. and Japan have initiated WTO actions against the European Union for tariffs imposed on newer technology consumer products, alleging that they violate the International Technology Agreement, which eliminated most duties on technology goods in the 1990's.

TAA & COLOMBIA FTA

- The Senate Finance Committee intends to mark-up the Trade Adjustment Assistance (TAA) bill on June 25. The TAA bill has been made a pre-requisite to proceeding on the U.S.-Colombia Free Trade Agreement by Democrats.
- The U.S. International Trade Commission is seeking public comments on the effect of the Andean Trade Preference Act on U.S. economic interests. The ATPA currently includes Colombia. Comments are due July 29, 2008. 73 Fed. Reg. [30627](#) (May 21, 2008).

BYRD DISTRIBUTION

Customs has announced the distribution of FY 2008 antidumping and countervailing duties under the Byrd Amendment, [listing](#) preliminary disbursement amounts and names of affected domestic producers. Customs must receive a certification by July 29, 2008 to receive a distribution. 73 Fed. Reg. [31196](#) (May 30, 2008).

GRI 3(b) COMPOSITE GOODS

In an instructive case on the application of the HTS General Rules of Interpretation, the Court of International Trade (CIT) ruled that "the mere fact that a piece of merchandise consists of more than one item or article does not necessarily make that merchandise a 'set' or a 'composite good'" under GRI 3(b). The CIT clarified that GRI 3(b) applies only if no provision in the HTSUS provides for the good "as a whole." [The Pomeroy Collection, Ltd. v. U.S.](#), Slip Op. [08-57](#) (May 27, 2008).

BIS

- In a [speech](#) given by Assistant Secretary for Export Enforcement Darryl Jackson, the Bureau of Industry and Security has outlined nine principles that industry can use in mitigating fines and sanctions: (1) whether the company has performed a meaningful risk analysis, (2) whether a formal written compliance program exists, (3) whether senior officials are responsible for overseeing the program, (4) whether adequate employee training is provided, (5) whether the company adequately screens customers and transactions, (6) whether the company meets recordkeeping requirements, (7) whether an internal system exists for reporting violations, (8) whether internal/external reviews or audits exist and results reported, and (9) whether remedial activity is taken in response to violations.
- BIS has released the second phase of its online training modules, including one on "deemed exports."

OFAC PENALTIES

The Office of Foreign Assets Control (OFAC) has amended its regulations to increase civil penalties to \$250,000 per violation 73 Fed. Reg. [32650](#) (May 27, 2008).

GSP

- The Customs Regulatory Audit Division has posted a document on Generalized System of Preferences ([GSP](#)) requirements and structuring internal controls to substantiate GSP claims.
- The deadline for submitting product petitions for the 2008 Annual GSP review is June 18, 2008. 73 Fed. Reg. [28174](#) (May 15, 2008).
- The Office of the U.S. Trade Representative has [released](#) an updated version of the "U.S. Generalized System of Preferences Guidebook."
- GSP is scheduled to expire on December 31, 2008, except for those countries included in the African Growth and Opportunity Act (AGOA). There has been no Senate or House movement on an extension.

COMMODITY JURISDICTION

The Directorate of Defense Trade Controls (DDTC) has posted [guidance documents](#) on the Commodity Jurisdiction (CJ) Request procedure.

9802 REGS

Heading 9802 contains some specific and fine distinctions. Customs has amended its regulations for articles entered in subheading 9802.00.80 to remove a distinction between "preservative" and "decorative" painting. 73 Fed. Reg. [33299](#) (June 12, 2008).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/08		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	272	256
SUBZONES	611	506
PENDING		
ZONES	0	
SUBZONES	25	
MISCELLANEOUS	30	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	8	
SUBZONES	10	