

BRIEFINGS

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TPP

The parties to the Trans-Pacific Partnership (TPP) - U.S., Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam – met last week in Hawaii to continue negotiations on a trade preference program. The U.S. Trade Representative (USTR) has issued an [outline](#) of issues being negotiated, including a single tariff schedule, common rules of origin, and regulatory harmonization. Canada, Mexico, and Japan have expressed interest in joining negotiations. The parties hope to conclude an agreement in 2012.

SAMPLING AND OFFSETTING

Customs has published a Final Rule, effective December 27, 2011, that authorizes statistical sampling methods in Customs audits and prior disclosures and permits overpayments and over-declarations to be offset against underpayments and under-declarations in calculating lost revenue owed Customs in certain instances. The use of sampling and offsetting typically raises a number of complex issues. Contact Sean Murray with questions. 76 Fed. Reg. [65953](#) (Oct. 25, 2011).

MPF INCREASE

The Automated Commercial System (ACS) system began accepting the new Merchandise Processing Fee (MPF) rate of 0.3464% on November 5, 2011. The system allows the new MPF rate to be applied for entry summaries that have a duty computation date of October 1, 2011 or later. CSMS [#11-000262](#) (Oct. 21, 2011) and CSMS [#11-00274](#) (Nov. 1, 2011).

FTZ SEMINARS

The firm has FTZ 101 and 201 seminars scheduled for December 6 & 7, 2011.

Please see our website for details and register by email to [Penny Freeman](#). The 101 seminar is at no charge to clients. There is a fee for non-clients. Payment by credit card is now accepted.

GSP UPDATES

- The Generalized System of Preferences (GSP) has been retroactively renewed through July 13, 2013. Customs has issued a [memorandum](#) on procedures for obtaining refunds of duties paid on eligible GSP merchandise entered or withdrawn between January 1, 2011, and November 4, 2011.
- The U.S. Trade Representative (USTR) is accepting petitions to modify the list of products and countries eligible for GSP duty-free treatment. Petitions are due by Dec. 5, 2011; requests for waivers of competitive need limitations are due by Dec. 16. 76 Fed. Reg. [67531](#) (Nov. 1, 2011).

PHARMA/ELECTRONIC CEEs

Customs has made the pharmaceutical and electronic industry Centers of Excellence and Expertise (CEEs) into [permanent programs](#). Revenue collection will still be a Port of Entry responsibility, while the Centers will receive participant import documents and perform validation activities including Protests, Post-Entry Amendments, Post-Summary Corrections, and prior disclosures. Contact Sean Murray with questions.

EXPORT REFORM

As part of the export reform effort, the Bureau of Industry and Security (BIS) has proposed a change to move responsibility for many military aircraft from the International Traffic and Arms Regulations (ITAR) to the Export Administration Regulations (EAR). The State Department concurrently issued a Proposed Rule. Aircraft and related technology taken from the U.S. Munitions List Category VIII would be placed into new Export Control Classification Numbers (ECCN) in Category 9 of the Commerce Control List (CCL). Comments on the Proposed Rule are due by December 22. 76 Fed. Reg. [68675](#) (Nov. 7, 2011) and 76 Fed. Reg. [68694](#) (Nov. 7, 2011).

NAFTA EXPORTS

Clients should remember that NAFTA compliance includes not only imports, but exports. Mexican statistics show 4,500 cases from 2007-2009 yielded \$8.6 billion in additional taxes due to import misdeclarations.

FTZ RETAIL TRADE

In a recent Customs ruling, Customs held that internet sales by Abercrombie & Fitch Trading Co., Inc. involving its foreign-trade subzone in New Albany, Ohio did not constitute prohibited retail trade under the Foreign-Trade Zones Act. Contact Scott Taylor with questions. HQ [H124476](#) (May 24, 2011).

ANTIDUMPING EVASION

During FY 2009 and 2010, Customs [assessed](#) 119 penalties totaling \$63 million related to AD/CVD evasion, and it has collected \$3 million to date.

FTAs

- On October 21, President Obama signed into law implementing legislation for the South Korea, Colombia, and Panama FTAs. The effective dates for each FTA may still be several months off because final approvals and implementation issues need to be addressed with each country.
- Customs has issued an Interim Final Rule for the U.S.-Peru FTA, effective November 3, 2011. Comments are due by January 3, 2012. 76 Fed. Reg. [68067](#) (Nov. 3, 2011).
- Customs has issued a Final Rule regarding U.S.-Oman FTA implementation. 76 Fed. Reg. [65365](#) (Oct. 21, 2011).

AES INACTIVITY WARNINGS

Census has announced that it will start to warn users who have not logged on to the Automated Export System (AES) for 25 days that they will be deactivated after 30 days. AES Broadcast #2011055.

INFORMAL ENTRIES

Customs has issued a Proposed Rule to increase the informal entry limit from \$2,000 to \$2,500 of merchandise value. Comments are due by December 27. 76 Fed. Reg. [66875](#) (Oct. 28, 2011).

C-TPAT UPDATES

Customs has [revised](#) the C-TPAT web portal to include a revised validation response page, responses to trade feedback on the validation scorecard, and an Adjusted Scorecard that awards credit for implementing recommendations and "Best Practices."

COUNTERFEIT PARTS

The importance of knowing your supply chain has recently been emphasized by the [sentencing](#) of a Florida woman to 38 months in prison for importing counterfeit integrated circuits from China and Hong Kong and selling them to the U.S. Navy, defense contractors, and others as "military-grade."

TARIFF ENGINEERING

The Court of International Trade (CIT) has issued a \$2.1 million default judgment against an importer for civil fraud penalties under 19 U.S.C. § 1592 in connection with Customs entries of Canadian softwood lumber made in 2003. The Government alleged that the defendant intentionally misrepresented the classification of the imported lumber by gluing boards together into panel shapes and entering them as wood panels not subject to antidumping and countervailing duties (ADD/CVD). After import, the glued boards were ripped apart and sold as softwood lumber. The subject ADD/CVD Orders were revoked retroactively in 2006, so the Government alleged a non-duty loss penalty. [U.S. v. Forest Products Northwest, Inc.](#), 1:11-cv-00143-NT (CIT Nov. 2, 2011).

PROTESTS

In [Hitachi Home Electronics \(America\) Inc. v. U.S.](#), the Court of Appeals for the Federal Circuit (CAFC) affirmed the lower court's decision that a Protest which remains undecided for more than two (2) years is not deemed allowed by operation of law. CAFC Slip Op. [2010-1345](#) (Oct. 31, 2011).

ECONOMIC ESPIONAGE

The U.S. Justice Department recently [announced](#) its first prosecution for foreign economic espionage. The case involves a Chinese national and former resident of Carmel, Indiana, who pled guilty to one count of economic espionage and one count of trade secrets theft for using his insider status at two large agricultural companies to steal valuable trade secrets for use in his native China.

MERCHANDISE EXAMS

The Port of Los Angeles has issued a public bulletin listing the responsibilities associated with examining merchandise, containers, pallets, and other packing material. [LA 11-017](#) (Oct. 24, 2011).

ACE UPDATES

- Since the ACE M1 drop on August 27, an e-214 filer cannot arrive an in-bond transaction associated with an air waybill, and the FTZ Online System is suppressing the delete notification when an e-214 FTZ Admission is being replaced. Customs is working on fixes to both issues.
- Customs has discontinued printing and mailing paper courtesy notices of liquidation to importers of record (IOR) whose entry summaries are filed via Automated Broker Interface (ABI). The ACE Courtesy Notice of Liquidation Report, AM-100, is currently only available through ACE. Contact Brian Murphy about other sources of liquidation information.

DDTC LICENSE RETURNS

Exporters no longer are required to return DSP-5 licenses that have been decremented by Customs. 76 Fed. Reg. [68311](#) (Nov. 4, 2011).

LACEY ACT UPDATES

A U.S. Virgin Islands company has been [sentenced](#) for violating the Lacey Act by knowingly and falsely labeling protected black coral. The company will pay nearly \$5 million in penalties.

POST-IMPORT FTA CLAIMS

Customs has revised its guidance on when post-importation trade preference program claims under 19 U.S.C. § 1520(d) can include classification or value corrections. CSMS [#11-000277](#) (Nov. 3, 2011).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 11/15/11		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	277	260
SUBZONES	682	534
	PENDING	
ZONES	5	
SUBZONES	18	
MISCELLANEOUS	32	
	AVERAGE PROCESSING TIME (MONTHS)	
ZONES	8	
SUBZONES	10	

The material contained herein is not to be construed as legal advice or opinion. More information may be obtained by contacting any attorney within the firm.
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