

# BRIEFINGS

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## FTZ REGS

- Customs announced at the February 7 National Association of Foreign-Trade Zones (NAFTZ) Legislative Conference that they are moving forward with revisions to the Customs FTZ Regulations in Part 146. Changes include expanding Direct Delivery criteria, eliminating the Blanket CBP Form 216 for manipulation, manufacture, and exhibit, and eliminating the 5-day rule. Do not expect prompt action.
- The FTZ Board Regulations are in final review at OMB. There is no definitive timetable for finalization. It is not known whether all or a portion of the new regulations will require a second round of comments. Contact Marshall Miller with questions.

## FTZ BACKGROUND CHECKS

The Customs presentation at the February 7 NAFTAZ Legislative Conference on a faster, more focused background check process appears to be in sharp contrast to the recent Department of Homeland Security Office of Inspector General (OIG) report, "CBP Management Control over Bonded Facilities," which found current background checks to be inconsistent and often ineffective, and recommended that Customs improve the process. [OIG 12-25](#) (Jan. 2012).

## QP IN-BONDS

Customs has issued an administrative message concerning problems involving QP in-bond entries for ACE truck manifest shipments. Customs directs the carrier to report the shipment as a regular PAPS shipment. CSMS [#12-000040](#) (Feb. 9, 2012).

## SEMINARS & WEBINARS

- **Classification Seminar** - A few spaces remain for our March 6-7 HTSUS Classification Seminar. This seminar is intended to develop advanced classification skills. Remaining spaces are on a first-come, first-served basis. Contact [Penny Freeman](#) for details and reservations.
- Other upcoming seminars include:
  - April 10 - FTZ 101
  - April 11 - Advanced FTZ 201
  - May 1 - Import/Export 101
  - May 2 - Advanced Import/Export 201
- We are completing a comprehensive program of client-only webinars on key subject matters. Expect a schedule announcement shortly.
- We now have an eCommerce store on our website to register for live seminars/webinars and pay by credit card. The store also allows clients to purchase and immediately download recorded webinars and subject documents. These are all client exclusive and you must have a current four (4) digit client matter number to log in. If you do not know your client matter number, contact [Mary Jane Brown](#).

## 2011 DATA ANALYSIS

Now is the time to order your company's 2011 Customs and Census records. The Firm's proprietary software programs process the government data into charts, reports, and graphs. For more details, visit our [website](#) or contact Marshall Miller or Brenda Zeller.

## C-TPAT SEAL STANDARD

Customs has issued a notice to Customs-Trade Partnership Against Terrorism (C-TPAT) participants that the new International Organization for Standardization (ISO) mechanical seal standard 17712:2010 becomes effective beginning March 1, 2012. The notice recommends use of seals meeting the new standard, but indicates that companies may deplete their existing stock of ISO/PAS 17712 seals.

## BONDED WAREHOUSES

- U.S. Customs has posted an updated [Bonded Warehouse Manual](#), which was last revised in 1990.
- Customs has published a notice proposing to modify two prior Customs rulings concerning impermissible "manufacture" in a Customs bonded warehouse. A foreign-trade zone is the preferred alternative. Comments are due by February 24, 2012. [46 Cust. B. & Dec. 5](#) (Jan. 25, 2012).

## 2012 HTSUS

- The 2012 Harmonized Tariff Schedule of the United States (HTSUS) went into effect on February 3. The International Trade Commission (ITC) has [posted](#) the online 2012 HTSUS with the World Customs Organization and other tariff nomenclature changes.
- The Census Automated Export System (AES) has been updated to accept the 2012 HTSUS revisions. AES will accept 2011 HTSUS numbers until March 4, at which time users of outdated HTSUS numbers will receive Fatal Error messages.

## TRADE MANAGEMENT

- President Obama's recent proposal to move the U.S. Trade Representative (USTR) into a new cabinet level agency with other existing agencies has been met with mixed review and opposition. In a January 24 letter, 86 business and agriculture groups supported the current effectiveness of the USTR in eliminating business and agricultural barriers in other countries.

- President Obama has requested \$26 million in his [budget](#) for a new Interagency Trade Enforcement Unit that will be housed in the Department of Commerce and be focused on unfair trading practices of countries such as China. Over \$11 million of the \$26 million will be dedicated to monitoring China's compliance with trade laws.

## FY2011 WHISTLEBLOWERS

The Securities and Exchange Commission (SEC) released its first [Annual Report on the Dodd-Frank Whistleblower Program FY 2011](#). Seven weeks of data yielded 334 tips. Thirteen (3.9%) concerned alleged violations of the Foreign Corrupt Practices Act. Thirty-two tips (10%) originated in foreign countries and ten (31.3%) of these foreign tips were from whistleblowers in China.

## LATE ISF IMPORTER REPORT

A new Importer Security Filing (ISF) Report entitled the "Late ISF Importer Report (PDF)" is now available to importers and filers. CSMS # [12-000031](#) (Feb. 2, 2012).

## BIS 2011 REPORT

The Bureau of Industry and Security (BIS) has released its [Annual Report](#) to Congress for fiscal year 2011. The report shows there were fewer administrative cases: 47 in 2011 versus 53 in 2010. However, 39 individuals and businesses were convicted of criminal violations, up from 31 the year before. Over \$20 million in fines were collected, an increase from \$12.3 million in 2010.

## SETS AND KITS

Two new Customs rulings illustrate the nuances of classifying sets. In [HQ H022164](#) (Jan. 24, 2012), Customs Headquarters refused to classify an IKEA tool set consisting of pencils, a tape measure, handsaw, level, and mallet in a container as a General Rule of Interpretation (GRI) 3(b) retail set because the tools merely performed general home repair activities. In [HQ H026664](#) (July 11, 2011), Customs classified a portable vapor fan consisting of a fan and vapor pads as a GRI 3(b) retail set under HTSUS 8414.59.60 (2.3%) because of the role of the fan in dispersing the fragrance.

## CUSTOMS PENALTIES

- The U.S. has sued a New York importer of fly paper in the U.S. Court of International Trade (CIT), asserting civil fraud penalties of \$816,742 for engaging in a double-invoicing scheme, which was reported to Customs by a former employee. [U.S. v. Roxide International, Inc.](#), 1:11-cv-00410 (Oct. 14, 2011).

- The CIT has ordered Customs to properly appraise the "domestic value" of unlawfully imported dietary supplements in order to calculate a 19 U.S.C. § 1592 civil fraud penalty. Customs had simply doubled the entered value to arrive at domestic value. [U.S. v. Callanish Ltd.](#), CIT Slip Op. [12-15](#) (Feb. 1, 2012).

## EXPORT BEST PRACTICES

The Wassenaar Arrangement released its ["Best Practices Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies"](#) at its December meeting in Vienna, Austria. These guidelines are intended for U.S. and non-U.S. entities.

## AES FATAL ERRORS

Beginning in April, Census will include outstanding Fatal Errors in its Automated Export System (AES) Compliance Reports. AES Fatal Errors must be fixed before the goods on the AES submission are exported.

## COUNTERVAILING DUTY

In the wake of the appeals court decision in [GPX International Tire Corp. v. U.S.](#), CAFC [2011-1107, -1108, -1109](#) (Dec. 19, 2011), the USTR and Commerce Secretary have sent a letter to House and Senate committees warning that the International Trade Administration (ITA) may be forced to revoke the existing 24 countervailing duty (CVD) orders on China and Vietnam without new legislation. Committee staff are preparing bills to "fix" the issue, which might also address the issue of "double counting" subsidies when applying CVD and antidumping duties (ADD) to non-market economies.

## SEIZURE/FORFEIT NOTICES

Custom has issued a [Notice](#) of proposed rulemaking to allow for the publication of notices of seizures and intent to forfeit on a Department of Justice forfeiture website rather than solely by traditional paper-based methods. Comments are due April 9, 2012. 77 Fed. Reg. [6527](#) (Feb. 8, 2012).

## SIMPLIFIED ENTRY

The updated Customs ["Trade Transformation"](#) document includes a Simplified Entry process flow chart for air cargo.

## CUSTOMS BUDGET

President Obama's proposed FY 2013 budget includes a \$7 million reduction for Customs automated systems, a \$36.8 million reduction in information technology equipment replacement, and \$21 million less for Customs Field Operations overtime.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 2/15/12		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	277	260
SUBZONES	684	533
PENDING		
ZONES	6	
SUBZONES	17	
MISCELLANEOUS	39	
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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4929 MAIN STREET  
KANSAS CITY, MO 64112  
816.561.4999  
FAX 816.561.5999  
E-MAIL [intllaw@millerco.com](mailto:intllaw@millerco.com)

1875 I STREET N.W., 5TH FLOOR  
WASHINGTON, D.C. 20006

233 BROADWAY, SUITE 2702  
NEW YORK, NEW YORK 10279