

ATTORNEYS AT LAW

BRIEFINGS

ROUTING SLIP

CBPF 28/29/4647 AUTOMATION

Customs will [automate](#) the CBPF 28 (Request for Information), CBPF 29 (Notice of Action), and CBPF 4647 (Notice to Mark and/or Notice to Redeliver) with the deployment of ACE ESAR A2.2, which is scheduled for Spring 2009. Importers will have the option of attaching an electronic file containing supplemental materials and tracking the status of their submission through the ACE portal.

LACEY ACT DECLARATIONS

Customs acceptance of electronic Form PPQ505 Declarations via the Automated Broker Interface system began April 1. Enforcement of the data collection requirement for Phase I HTS Chapter provisions will begin May 1. Paper submissions of Form PPQ 505 may also be made with notification made to Customs and the form being mailed to Animal and Plant Health Inspections Service (APHIS).

BUY AMERICAN

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued an Interim Rule amending the Federal Acquisition Regulation to include a "Buy American" provision, which generally requires U.S. produced construction equipment and materials in any stimulus funded projects. Comments are due on the Interim Rule by June 1, 2009. 74 Fed. Reg. [14623](#) (March 31, 2009).

EXPORT SEMINAR

The firm's [advanced export seminar](#) is May 12-13. The firm's newest employee, Jerry Greenwell, former Chief of the Census Bureau's Regulations, Outreach, and Education branch and Trade Division Ombudsman, will be joining us as a presenter. Register now by e-mail to Penny Freeman at pfreeman@millerco.com.

2009 Training Seminars

Details on the firm's other 2009 seminars are on our website at www.millerco.com.

CBPF 28/29 SURGE

With Customs entry volume down, Customs has more time for compliance. Topics have included classification, value, and NAFTA qualification. At one Port Customs took the aggressive position, that it had opened an investigation with the filing of the CBPF 28.

INADVERTENT ERRORS?

The Court of Appeals for the Federal Circuit (CAFC) has issued a decision on inadvertent errors in paying export HMT, holding that "knowing, repeated and consistent" errors are not "inadvertent" under Section 1520(c)(1). The Court further noted that negligent inaction or legal misunderstanding even on the part of Customs did not create an inadvertence on the part of the importer. [Esso Standard Oil, Co. v. U.S., CAFC Slip Op. 2008-1212 \(March 16, 2009\)](#).

MEXICO RETALIATES

Mexico has implemented retaliatory tariffs on [89 tariff classifications](#) on March 19 in response to the U.S. cancelling its U.S.-Mexico cross border trucking pilot program. Impacted products include certain metals, juices, wines, mineral water, and a variety of fruits and vegetables. The Obama Administration is considering [corrective actions](#) that would add a new trucking project.

ISF

- Customs is ready to provide ISF (10+2) Filers with performance reports on their ISF filings for the initial months. Filers must communicate contact information to Customs via progress_report@cbp.dhs.gov. If the importer did not file ISF data directly, the importer will have to obtain report information from the filer.

- Comments on the interim 10+2 requirements are due by June 1, 2009. The six data elements for which Customs is receiving comments are container stuffing location, consolidator (stuffer), manufacturer (or supplier), ship to party, country of origin, and commodity HTS number. 73 Fed. Reg. [71730](#) (Nov. 25, 2008). Contact Sean Murray for help with comments.

FDA MEETS ON EMA

FDA will hold a public meeting on May 1, 2009, to discuss "economically motivated adulteration" (EMA) in food, drug, and cosmetic products. 74 Fed. Reg. [15497](#) (Apr. 6, 2009).

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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USTR

- The U.S. Senate confirmed former Dallas Mayor Ron Kirk as the U.S. Trade Representative on March 18.
- *Inside U.S. Trade* reports that Tim Reif, the newly-appointed USTR General Counsel, has asked the AFL-CIO to provide information about union trade enforcement priorities.

REPAIR AMERICA II

Customs has withdrawn its Proposed Rule to exclude the cost of U.S. parts from the dutiable value of articles exported from and returned to the United States under HTSUS subheadings 9802.00.40 - .60. 74 Fed. Reg. [14099](#) (Mar. 30, 2009).

CENSUS WARNINGS

Entry Summary [filers](#) using the Automated Commercial Environment (ACE) will soon be able to submit an override code preemptively for known Census variances or to certify information after filing directly with Census to override Census warnings.

STIMULUS FUNDS

The Department of Homeland Security (DHS) has posted press releases on how American Recovery & Reinvestment Act (ARRA) funds will be spent. An [Overview](#) of the \$980M ARRA funding allocated to Customs includes \$720 million for construction at land ports of entry (\$420 million for CBP-owned land ports and \$300 million for GSA-owned land ports), \$100 million for Non-Intrusive Inspection (NII) technology, and \$100 million for border technology on the southwest border.

ESAR A2.2

ACE Entry Summary Accounts Revenue (ESAR) A2.2 for initial entry types 01 (Formal) and 11 (Informal) deployed on April 12, 2009. ESAR A2.2 will [provide](#) Customs with nationwide [visibility](#) of post summary processing activity. Clients should understand the consequences.

C-TPAT

- Customs has [revised](#) C-TPAT minimum security standards for rail carriers detailing security seal standards, use, reporting, training, and records requirements. Customs emphasizes continuous seal integrity in the updated standards.
- Customs has [posted](#) C-TPAT Validation Process Fact Sheet and Frequently Asked Questions on their website. Understanding the validation process is critical for participants because Customs processed 3,469 C-TPAT supply chain validations in 2008, and the objective is to exceed that number in 2009.

APHIS

- APHIS has published a [brochure](#) describing its electronic permitting system ePermits. Through ePermits, registered users can submit import permit applications, track applications, apply for renewals and amendments, and receive copies of permits.
- APHIS has posted increased user fees for permits, inspections, and a variety of other services for the period of 2009 through 2013. 74 Fed. Reg. [13999](#) (March 30, 2009).

US REISSUES HIGH EU DUTIES

The U.S. Trade Representative (USTR) has announced modifications to European Union special duty rates (in HTSUS subheading 9903.20) effective April 23, 2009, imposed in retaliation for continued EU bans on US beef. FTZ admissions for goods must be made in Privileged Foreign status for these goods. 74 Fed. Reg. [11613](#) (March 18, 2009).

HTS CHANGES FOR 2012

The World Customs Organization has adopted [amendments](#) to the Harmonized System (HS), the harmonized international tariff schedule nomenclature, at its recent March meeting, to reflect changes in trade patterns, technology, interest in food security, chemicals, and pesticides.

WORLD TRADE DOWN

The World Trade Organization (WTO) recently [predicted](#) that world trade will decline by 9% in 2009, the biggest annual drop experienced since World War II.

ANTI-COUNTERFEITING

The USTR and foreign governments have released a draft of the [Anti-Counterfeiting Trade Agreement](#) (ACTA). The goal of the agreement will be to establish international standards for enforcing intellectual property rights with a focus on counterfeiting and piracy activities. Negotiations are ongoing and the intent of releasing the draft is to inform interested parties about enforcement and legal framework issues being discussed.

LICENSE USE RATES

BIS has requested comments on why many BIS licenses go unused or under-used, and whether the licensing process induces applications for licenses exceeding actual need. 74 Fed. Reg. [11908](#) (March 20, 2009). Clients should be careful in what they disclose in comments. Contact Mark Teerink with questions.

YOU'RE OUT!

In a very unusual value case, the Court of International Trade refused to change the liquidated declared value for certain R&D payments. The Court concluded that neither the plaintiff nor the defendant had met the burden of establishing what the proper customs value should have been. [Continental Teves v. U.S.](#), CIT Slip Op. [09-26](#) (April 1, 2009).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 4/15/09		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	272	254
SUBZONES	633	528
PENDING		
ZONES	2	
SUBZONES	25	
MISCELLANEOUS	35	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	8	
SUBZONES	10	