

# BRIEFINGS

VOLUME 22 NO. 5

May 15, 2010

## PRODUCT SAFETY

- Customs and the Consumer Product Safety Commission (CPSC) have signed a [Memorandum of Understanding](#) to provide the CPSC with direct access to Customs Import Safety Commercial Targeting and Analysis Center (CTAC) data so it can conduct safety risk assessments.
- The CPSC will begin to issue its own import detention notices when a shipment is held exclusively for CPSC purposes. Reports indicate that the notices will start being issued in June or July.
- The CPSC has announced a settlement with Jo-Ann Stores Inc. for payment of a \$50,000 civil penalty for the alleged importation and sales of toys with lead paint exceeding legal limits. 75 Fed. Reg. [23745](#) (May 4, 2010).

## FDA PREDICT DELAYED

The Food and Drug Administration has [announced](#) an indefinite delay in the scheduled nationwide release of its Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT) due to information technology problems such as server crashes and overloads. It will continue to use PREDICT in Los Angeles and New York.

## AES PENALTIES

We have seen Customs issue penalties for AES data errors such as port of export or carrier, instead of allowing the filer to correct the errors, as was often the prior practice. We will be working with Customs and Census to review this process. Contact Jerry Greenwell with questions.

## FTZ TRAINING SEMINAR

There is still time to sign up for the client-only FTZ 101 Seminar on June 15-16. Register by e-mail to [Penny Freeman](#).

## RESIDUE REVISITED

Either bravely or naively, Customs has decided to [reissue](#) its opinion on the treatment of residual amounts of material in imported containers. In a new FAQ, Customs states appropriate measures must be in place to ensure entries are accurately filed for any "cargo" (i.e. residue) with a value over \$200, and estimated values and quantities determined to be incorrect must be subsequently revised. Industry uproar last year led to a delay in applying the ruling that changed practice on residuals. Now Customs is attempting to implement the change through a FAQ, instead of by administrative rule-making. Expect industry objections. Contact Sean Murray with questions.

## INCOTERMS 2010

Frank Reynolds, the U.S. delegate to the 2010 Incoterms Revision committee, has indicated that agreement on the 2010 Incoterms revisions has been reached by the ICC Commercial Law and Practice Commission. The changes still have to be approved by the ICC Executive Board, which meets in September. Details have not yet been released, but Mr. Reynolds has indicated there will be fewer terms than the 13 today, some will be brand new, and some will be suitable for domestic transactions.

## TRANSFER PRICING

Two May 14 Bloomberg articles on highlight continuing issues and concerns with corporate transfer pricing strategies, including one named "the Double Irish." Customs recently denied an importer's post-importation value adjustments because it failed to provide information on a transfer pricing study, how the IRS-related adjustments were executed, and whether the adjusted values satisfied the "circumstances of the sale" test. [H008706](#) (Jan. 12, 2010).

## OBAMA EXPORT REFORM

The Obama Administration has [proposed](#) a three-phased plan to reform the export control system. The first phase will be establishing the framework for the new system by harmonizing terms and licensing policies and processes. The second phase will be transition to a tiered control list and progress towards a single licensing system. The final phase involves creation of single licensing and enforcement programs. Full implementation will require Congressional action.

## ISF ENFORCEMENT

Customs has entered the second phase of its graduated ISF enforcement and has started putting holds on shipments arriving without ISF filings.

## SENATE ON CUSTOMS

During a recent Senate Finance Committee [hearing](#), Senators pushed Customs Commissioner Alan Bersin on Customs trade facilitation measures and improved communication with Congress.

## APHIS UPDATES

- The Animal and Plant Inspection Service (APHIS) has updated its [Manual for Agricultural Clearance](#), which provides Customs Port personnel with guidelines, directions, and policies relating to the Plant Protection and Quarantine (PPQ) program.
- APHIS has instituted a two-month grace period for its implementation of the Lacey Act requirement for importers to use metric units for reporting quantities. Enforcement is now scheduled to begin on July 1, 2010.
- APHIS has submitted [regulations](#) for the Office of Management and Budget to review involving definitions for "common food crops and cultivars" that are exempt from the Lacey Act import declaration requirement.
- As discussed at the April 2010 National Customs Brokers and Forwarders Association of America annual conference, ACE is supposed to incorporate Lacey Act requirements into the system sometime within fiscal year 2010.

## LA DRAWBACK CENTER

Customs has announced that the Port of Los Angeles-Long Beach will close its Drawback Processing Center on June 4, 2010. Outstanding claims will be processed at the Port of San Francisco Drawback Center. 75 Fed. Reg. [24392](#) (May 5, 2010).

## EPA IMPORT PENALTY

The Environmental Protection Agency has [announced](#) that Pep Boys agreed to pay \$5 million to settle alleged Clean Air Act violations by importing motorcycles, RVs, and generators from China that failed to meet EPA requirements.

## BOND INCREASES

The Customs Operations Advisory Committee (COAC) Bond Subcommittee meeting minutes of [April 9](#) and [April 22](#), 2010 clearly indicate that Customs intends to increase bond amounts to ensure bonds cover possible claims.

## CUSTOMS BROKER EXAM

Customs has posted its April 2010 Broker's [exam](#) and [answer key](#) to its web site. The pass rate was 11.1%

## HAITI HELP

The House and Senate recently passed [H.R. 5160](#), which expands duty-free access to the U.S. market for additional Haitian textile and apparel exports and extends existing trade preference programs for Haiti through 2020.

## FDA IMPORT PLAN

The Food & Drug Administration's Office of Regulatory Affairs (ORA) hopes for a June 2010 release of a finalized [Import Operations Strategic Plan and National Import Program](#) designed to update FDA import operations to address increasingly complex global supply chains that include outsourced manufacturing and imports from countries with less developed regulations. The ORA's stated goal is to increase FDA authority over imports.

## ICE 2011 GOALS

The Department of Homeland Security's Congressional [Budget Request for FY 2011](#) includes a list of goals for ICE, that includes working with Customs to expand the "security bond" initiative targeting the illegal diversion of commercial goods transported globally via the in-bond process.

## SCHEDULE B SEARCH TOOL

The Census Foreign Trade Division has [introduced](#) an improved tool to assist exporters in finding Schedule B numbers.

## BIS ENFORCEMENT

[Telogy LLC](#) has agreed to pay a \$76,000 civil penalty and its Belgian [affiliate](#) has agreed to pay \$75,000 (with \$362,000 suspended) for shipments of oscilloscopes and spectrum analyzers to China, India, Israel, and South Africa without the necessary licenses. Shipments were routed to avoid U.S. export controls.

## IPR ENFORCEMENT

The government continues to aggressively pursue intellectual property rights violations:

- The Departments of Justice and Homeland Security have [published](#) the results of Operation Network Raider, their counterfeit network investigation, yielding 30 felony convictions and 700 seizures of counterfeit Cisco (brand) network hardware. The agencies claim a 75% drop in the number of network hardware seizures from 2008 to 2009 as a result of their efforts. DOJ Press Release (May 6, 2010).
- The National Intellectual Property Rights Coordination Center's "Operation Spring Cleaning" [seized](#) over \$44 million of counterfeit merchandise being imported into a dozen U.S. cities. The merchandise included DVDs, circuit breakers, pharmaceuticals, video games, sportswear and luxury goods.

## "MORE THAN" DOCTRINE

Customs has revoked a series of rulings classifying LED modules as LEDs in Heading 8541 (0%) and classifying them instead as "Lamps not elsewhere specified" in Heading 9405 (3.9%) because the modules contain additional components and are considered "beyond the scope" of Heading 8541. [44 Cust. Bull. & Dec. 17](#) (Apr. 21, 2010).

## NEW REGULATIONS

A recent New York Times [article](#) has articulated what many involved in Federal Government interactions have been noticing-- an increase in new Federal regulations under the Obama administration.

### FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 5/15/10

	APPROVED	CURRENTLY AUTHORIZED
ZONES	274	257
SUBZONES	653	509
PENDING		
ZONES	1	
SUBZONES	30	
MISCELLANEOUS	37	
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.  
© 2010 Miller & Company P.C.

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