

# BRIEFINGS

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## FTZ KITTING OPS

The CIT recently held that U.S. Customs properly classified a backup battery not as a part of a computer kit (duty-free) but individually as a battery (3.4%), because it was considered an additional accessory to the computer kit. The batteries were added to the computer in a foreign-trade zone – a common FTZ duty savings activity which remains unchanged by the decision. The primary battery inserted in the computer was treated as a part of the computer kit and duty-free. FTZ Operators should review existing kitting operations to confirm compliance with this case. [Dell Products LP. v. United States](#), CIT Slip Op. [10-66](#) (June 10, 2010).

## GREEN IMPORTS

The International Trade Commission has launched an investigation regarding the economic effect of duty free treatment for imported environmental goods. Public Comments are due on July 7, 2010. 75 Fed Reg. [28652](#) (May 21, 2010). Contact Sean Murray with questions about the investigation.

## DISCONTINUED ITA-362P

The International Trade Administration (ITA) has [discontinued](#) the ITA-362P form used for importing articles for the handicapped duty-free, instead collecting the data using the Customs Automated Commercial System. The Commerce Department may still request proof to support qualification for use of the preferential duty provision. 75 Fed. Reg. [30373](#) (June 1, 2010).

## PHARMA APPENDIX

The U.S. International Trade Commission has instituted an investigation to consider over 700 proposed additions to the HTSUS Pharmaceutical Appendix, giving duty-free access to pharmaceutical products and chemical intermediates. The USTR has already provided [comments](#) and the ITC is accepting [comments](#) until July 14, 2010. 75 Fed. Reg. [33824](#) (June 15, 2010).

## FASTENERS

The classification of fasteners continues to be an area of great difficulty. The CAFC has affirmed a CIT decision classifying oil bolts as screws at 8.5% duty. The court applied “parts of general use” analysis rejecting Honda’s argument that the more general duty-free parts of automobiles provision was appropriate because of the nature of the oil bolts. [Honda of America Mfg. v. U.S.](#) CFAC Slip Op. [2009-1493](#) (June 2, 2010). Contact Sean Murray with questions.

## CUSTOMS COMMISSIONER

In a [speech](#) to the American Association of Exporters and Importers, Customs Commissioner Alan Bersin stated that 90% of non-compliant trade is caused by 10% of importers and exporters, and indicated that Customs needs to focus its resources on the non-compliant 10%. He encouraged participation in C-TPAT and Known Shipper programs so Customs can devote most of its resources toward non-participants. Contact Sean Murray with questions about the firm’s C-TPAT program.

## AES OPTION 4

Census and Customs are working on a Proposed Rule that is expected to appear in the Federal Register in late June or early July on post departure filing of Electronic Export Information (EEI) through the Automated Export System (AES). It is anticipated that this “Option 4” filing will be going away except for a few agricultural and bulk commodities. It is estimated that approximately 20% of all EEI/AES filings fall into Option 4. Even the few agricultural and bulk commodity users who will still be eligible for Option 4 will need to reapply. Contact Jerry Greenwell with questions or for assistance in preparing comments.

## NEW IRAN SANCTIONS

Now that the UN has [approved](#) the additional international sanctions on Iran, new unilateral sanctions are likely to come from Congress in the coming weeks. There is bi-partisan support for additional sanctions. There is also momentum gaining to add additional export controls on countries with weak export controls that are re-export “hot-spots” of controlled items to Iran. Businesses are concerned that companies with only a link to a transaction could find themselves a target of the new sanctions. In addition, legislation (H.R. [5136](#)) has been introduced that would bar foreign firms doing business with Iran from receiving Department of Defense contracts. Companies applying for a Defense contract would be required to certify that they do not do energy business with Iran.

## BIS CLARIFIES APP

The Bureau of Industry and Security (BIS) issued a Federal Register notice to clarify the Adjusted Peak Performance (APP) license exception. 75 Fed. Reg. [31678](#) (June 4, 2010).

## FTZs and AD/CVD

The Foreign-Trade Zones Board has preliminarily approved two new FTZ projects, provided they pay AD/CVD duties on admitted silicon metal subject to AD/CVD duties even if the products are ultimately exported without entering U.S. commerce. 75 Fed. Reg. [31762](#) (June 4, 2010). This change in FTZ Board precedent on AD/CVD is concerning. Contact Marshall Miller to discuss.

## CHINA C-TPAT

China's General Administration of Customs and U.S. Customs have [signed](#) a Memorandum of Understanding (MOU) on supply chain security, creating harmonized supply chain security standards.

## EXPORT REFORM

Export reform continues to move forward. Officials are indicating that they are close to agreement on a single export license application form covering BIS, Directorate of Defense Trade Controls (DDTC), and the Office of Foreign Asset Controls (OFAC). It also appears that the DDTC information technology system will be adopted, rather than BIS's SNAP-R system. As for creating a single agency, legislation needs to be passed, but it appears that the Nuclear Regulatory Commission (NRC) will not be incorporated into the single agency and will continue to grant their own export licenses. The U.S. Munitions List (USML) will be changed from a list of attributes, to a "positive" list of items.

## DUTY FREE IMPORT LIMIT

Under legislation introduced in H.R. [5375](#), the duty-free allowance for travelers returning to the United States would be raised from the current \$200 limit to \$1,000.

## BIS CLARIFIES THE EAR

The BIS has issued a Federal Register notice to clarify that foreign made products physically in the United States are subject to the Export Administration Regulations (EAR). Prior to the clarification, the regulations could be interpreted to exempt foreign made products from the EAR. 75 Fed. Reg. [31678](#) (June 4, 2010).

## EXPORT DISCLOSURES

The (BIS) is requesting comments regarding its process for handling Voluntary Self Disclosures (VSDs). Comments are due July 23, 2010. 75 Fed. Reg. [28780](#) (May 24, 2010).

## CUSTOMS METRICS

Commissioner Bersin has sent a [letter](#) to the Senate Finance Committee listing eight metrics that could be used to track Customs performance on enforcement and trade facilitation: (1) rates of material compliance of all importations; (2) rates of detection of unsafe products; (3) rates of detection for imported non-compliant cargo; (4) rate of material compliance with regard to payment of duties, taxes, and fees; (5) rates of material compliance by importers designated as managed accounts or trusted partners; (6) speed at which compliant imports clear Customs; (7) reduction in required paper-based documents and penalties for managed accounts and trusted partners; (8) participation in partnership programs. Publication of these metrics would provide useful data for the trade.

## NAFTA CERTS REQUIRED

Customs has denied a post-importation claim for NAFTA duty preference because the importer did not have a valid Certificate of Origin in its possession at the time of the claim. Importers are reminded to verify they have the necessary Certificates of Origin in their possession when making NAFTA claims. HQ [W563317](#) (Mar. 23, 2010).

## BUY AMERICAN

As a reminder that the Buy American Act does not require "Made in USA" articles, Customs has issued a ruling determining that the country of origin of a mobile hand held computer assembled in Canada, and loaded with Canadian software qualifies as a Canadian product for origin determinations under the Buy American Act and WTO Government Procurement Agreement. Foreign goods can qualify for government procurement purchases, even though the Buy American Act applies, because the U.S. has signed various International Agreements (WTO, FTAs) that confer preferential treatment to goods of signatory countries. 75 Fed. Reg. [32803](#) (June 9, 2010).

Customs has also issued a ruling finding that Sweden is the country of origin, for purposes of U.S. government procurement, of a finished overhead patient lift unit assembled in Sweden made from almost 100 parts from non-Trade Agreements Act (TAA) countries. Because Sweden is a TAA country, the lift system is treated as a U.S.-made product. 75 Fed. Reg. [31803](#) (June 4, 2010).

## INTRA-COMPANY TRANSFERS

The BIS has indicated that the proposed Intra-Company Transfer Rule has been put on hold for now pending the Obama Administration's higher level export reform efforts. This rule would have allowed companies to more easily transfer technology and products between company sites, locations, and employees.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/10		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	274	257
SUBZONES	655	511
PENDING		
ZONES	1	
SUBZONES	31	
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.  
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