

BRIEFINGS

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TRANSFER PRICING CHANGE

Customs has announced that it will now accept the transaction value methodology for appraisement when a related party sales price is subject to post-importation adjustments under transfer pricing policies. Consistent with this new position, Customs has also revised its list of factors for determining whether an objective pricing formula is in place prior to importation. The post-importation adjustments are to be included in transaction value and the use of the Reconciliation Prototype is "strongly encouraged" by Customs. Contact Tom Lobred or Sean Murray with questions. 46 Cust. B. & Dec. [1](#) (May 30, 2012).

USML CATEGORIES XIII, IX & X

The Directorate of Defense Trade Controls has issued a Proposed Rule to transfer many of the items in Categories XIII, IX, and X of the U.S. Munitions List (USML) to the Commerce Control List (CCL). Category XIII includes auxiliary items such as certain cameras, cryptographic systems, diving apparatus, and special materials. Category IX includes military training and related equipment. Category X includes personal protective equipment, such as body armor, pressure suits, and shelters. Comments are due by July 2 for Category XIII, July 30 for Category IX, and July 23 for Category X. 77 Fed. Reg. [29575](#) (May 18, 2012); 77 Fed. Reg. [29564](#) (May 18, 2012); 77 Fed. Reg. [33698](#) (June 7, 2012); and 77 Fed. Reg. [33688](#) (June 7, 2012); 77 Fed. Reg. [35310](#) (June 13, 2012); 77 Fed. Reg. [35317](#) (June 13, 2012).

WEBINARS

- The June 7 Webinar, "Purchasing and Sourcing Departments: Import Compliance Guidelines," is now available for [download](#) in our eStore. The download includes the presentation and recorded Webinar, which provide explicit guidance on what purchasing and sourcing departments should secure before issuing international purchase orders or signing contracts, including: tariff classification, duty rate, customs value, origin marking, other agency import requirements, special trade program considerations, and more.
- The June 14 Webinar on "Incoterms" is also now available in our [eStore](#). The Webinar provides a detailed explanation of the 2011 Incoterms updates.
- Registration is still open for the [Customs Bonds & Liquidated Damages](#) Webinar to be held June 21 at 1:00 p.m. (CDT). It will cover Customs bond requirements and liquidated damages assessments against bonds.

TRADE BILL

- Public [comments](#) are being accepted on the proposed duty suspension provisions until June 22, 2012. More than 13,000 individual items were introduced in the House alone.
- Senators Claire McCaskill (D-Mo.) and Rob Portman (R-Ohio) have introduced [legislation](#) to reform the temporary duty suspension process by having companies directly submit requests to the U.S. International Trade Commission.

MISCLASSIFICATION

Following an Immigration and Customs Enforcement (ICE) investigation, the U.S. government has [reached](#) a \$6.3 million settlement with six companies and two individuals that misclassified imported auto parts, evading \$2.5 million in duties. One of the companies also entered a guilty plea to criminal charges under 18 U.S.C. § 542 for entry of goods by means of a false statement for misclassifying auto manifolds valued at \$102 million as "unfinished" parts. The case was initiated under the False Claims Act by a whistleblower, who received \$1.2 million from the United States.

FTZ

- Since implementation of ACE as the system of record for the Foreign-Trade Zone program, the edit requiring that house bills are to be sent only for air shipments is being enforced. Customs is working to program a rejection if a house bill is sent in an FTZ admission for vessel or truck modes of transport. A CSMS will be issued when the change is moved to production. CSMS [#12-000168](#) (May 7, 2012).
- We have become aware that ACE has been incorrectly targeting FTZ entries for exams, and that Customs has issued internal guidance for those exam notices to be overridden. Contact Linda King with questions.

SIMPLIFIED ENTRY

Customs has received the first Simplified Entry filings at the three pilot ports of Indianapolis, Chicago, and Atlanta. CSMS [#12-000197](#) (June 4, 2012).

CUBA PENALTIES

[Ericsson de Panama](#) has paid a \$1.753 million dollar fine for exports to Cuba. The goods were items previously sold to Cuba that were returned for repair or replacement. The items were shipped to Panama, repackaged and sent to the U.S. for repair or replacement and return.

GSP REFUNDS

Customs has issued a message stating that importers may seek redress through Protest if they were erroneously denied a refund of duties paid on goods otherwise eligible for duty-free treatment under the Generalized System of Preferences that were entered or withdrawn from warehouse for consumption during the period January 1 through November 4, 2011, when GSP authorization lapsed. [CSMS #12-000163](#) (May 14, 2012).

USE ITN NOT EIN

Census has sent a [reminder](#) to exporters to reference the Internal Transaction Number (ITN) and not the Employer Identification Number (EIN) when communicating with Census regarding Automated Export System (AES) transactions via e-mail.

NAFTA USED GOODS

In an interesting application of the NAFTA rules, Customs has proposed to allow refrigerant gas recovered from used equipment in Canada to qualify for preferential treatment under NAFTA. Comments are due June 29, 2012. Clients should consider its potential application to similar recycling and repair operations. 46 Cust. B. & Dec. [19](#) (May 30, 2012).

USTR

U.S. Trade Representative Ron Kirk has named Principal Deputy General Counsel Brad Ward to be the director of the Interagency Trade Enforcement Center (ITEC). ITEC is the new entity created to enhance the monitoring and enforcement of trade policy.

AIR CARGO SCREENING

- The Transportation Security Administration (TSA) has [established](#) a December 3, 2012 deadline for 100% air cargo screening on all international flights bound for the United States.
- The TSA has [announced](#) a cargo screening process agreement, effective June 1, 2012, between Canada, the EU, Switzerland, and the U.S. It is intended to make cargo screening more efficient by harmonizing security rules and increasing information sharing.
- The Government Accountability Office (GAO) has issued a report that indicates TSA should analyze the costs versus benefits of requiring in-bound air cargo carriers to submit additional cargo screening data. [GAO-12-632](#) (June 11, 2012).

HUGE OFAC FINE

The Office of Foreign Assets Control (OFAC) has [settled](#) with ING Bank, N.V. (ING) for \$619 million for various sanctions violations. ING senior management allegedly omitted references to Cuba and other sanctioned countries intentionally when payment messages were sent to the U.S.

NAFTA CLAIMS

In a case showing the need for care when filing post-entry NAFTA claims and Protests, the U.S. Court of International Trade (CIT) has dismissed an importer's claim for NAFTA treatment on the grounds that its Protest covered only the classification issue and not the post-entry NAFTA claim. [Rogelio Salazar Cavazos v. U.S.](#), CIT Slip Op. [12-82](#) (June 14, 2012).

BROKER RECORDKEEPING

Customs has issued the Final Rule on Customs Broker Recordkeeping Requirements. It permits licensed brokers to store Customs transaction records at any location within the Customs territory of the United States. 77 Fed. Reg. [33964](#) (June 8, 2012).

SOLAR CELLS AD/CVD

- On May 17 the U.S. Commerce Department imposed preliminary and retroactive antidumping (AD) duties on imports of crystalline silicon photovoltaic cells from China. AD duty rates range from 31% to 250%. 77 Fed. Reg. [31309](#) (May 25, 2012).
- In addition, importers of solar panels are required to provide certification that the imported solar panels do not contain Chinese solar cells. Customs is to collect AD and CV duties if the importer does not provide certification. [CSMS #12-000215](#) (June 13, 2012).

NAFTA CERTIFICATES

The current CBP Form 434 NAFTA Certificate of Origin indicates a March 31, 2012 expiration date, but companies may continue to use it until the reapproved CBP Form 434 is available. [CSMS #12-000208](#) (June 11, 2012).

FTA – COLOMBIA

The U.S.-Colombia FTA was implemented on May 15, 2012, pursuant to Presidential Proclamation 8818. Clients should be reviewing shipments to identify savings opportunities. 77 Fed. Reg. [29519](#) (May 18, 2012).

IRAN SANCTIONS

The U.S. recently [announced](#) the exemption of seven additional countries (India, South Korea, Turkey, Taiwan, South Africa, Sri Lanka, and Malaysia) from sanctions aimed at Iran's oil sales. The announcement did not include a decision concerning China.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/12		
	<u>APPROVED</u>	<u>CURRENTLY AUTHORIZED</u>
ZONES	278	261
SUBZONES	687	535
	<u>PENDING</u>	
ZONES	6	
SUBZONES	15	
MISCELLANEOUS	55	
	<u>AVERAGE PROCESSING TIME (MONTHS)</u>	
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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