

BRIEFINGS

VOLUME 22 NO. 7

July 15, 2010

1,300 AES/EEI PENALTIES

During a recent webinar, Customs indicated that it has issued approximately 1,300 penalties related to Automated Export System and Electronic Export Information (AES/EEI) filings in the first half of 2010. Although penalties can be as high as \$10,000, most are believed to be under \$1,000. The most common errors have been improper port, incorrect values, wrong HTSUS or Schedule B, and late filings.

100% SCREENING

The Transportation Security Administration (TSA) is working toward the August 1, 2010 mandated deadline for the 100% screening of cargo flown on passenger aircraft that originates in foreign countries. The TSA has indicated that the 100% screening mandate cannot be met by the deadline. A big challenge is the existing technology cannot screen some kinds of shipments, such as certain perishables, electronics, and pharmaceuticals.

ISF

Customs has posted to its website a new version of its Importer Security Filing [FAQ](#) document. Customs has also issued an administrative message implementing other changes. CSMS [#10-000162](#) (July 14, 2010).

FTA - CHILE

The USTR is accepting proposals for accelerated tariff elimination and modification of rules of origin under the U.S.-Chile FTA. Proposals are due by August 6. 75 Fed. Reg. [39613](#) (July 9, 2010).

EXPORT CONTROL REFORM

The Administration is moving forward with its export control reform initiative, but has abandoned its attempt to create a single export control agency through the National Defense Authorization bill. The independent export control and licensing agency outside of State, Commerce, and Treasury would be governed by a board of directors made up of the secretaries of Commerce, Treasury, Defense, State, and Homeland Security. Other related proposals include:

- Combining the Office of Export Enforcement with Immigration and Customs Enforcement (ICE).
- Routing every license request through an enforcement "Fusion Center."
- Turning the Commerce Control List and the U.S. Munitions List into a tiered structure, with Weapons of Mass Destruction at the highest tier.
- Commerce is looking for comments on Federal programs that impede exports and suggested program improvement. 75 Fed. Reg. [37756](#) (June 30, 2010).

REVISED 2010 HTSUS

The U.S. International Trade Commission has [published](#) its first revision to the 2010 Harmonized Tariff Schedule. Notable changes involve the Generalized System of Preferences (GSP) and expiration dates for many Chapter 98 and Chapter 99 provisions.

MEXICO'S DRUG CARTELS

Clients are urged to read a very thoughtful article in the July/August [Foreign Affairs](#) magazine by former DEA Administrator and CBP Commissioner Robert C. Bonner.

IRANIAN TRANSACTIONS

The President signed The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) on July 1 ([H.R. 2194](#)). The CISADA expands current sanctions on Iranian petroleum and military programs to cover many indirect support activities and increases potential related party liability by modifying the actual knowledge requirement. Countries that divert certain products could see additional licensing requirements, and government contractors will be required to certify that they (and subsidiaries) are not supporting Iran's petroleum industry. In addition, a number of individuals have been added to the Special Designated Nationals List. The firm has a summary memo on the Act. Contact Chuck Ballard for details.

INCOTERMS 2010

The International Chamber of Commerce (ICC) has published the new list of Incoterms that is expected to be finalized in September. There will be a total of 11 Incoterms, versus the 13 today, with DAF (Deliver at Frontier), DES (Deliver Ex Ship), DEQ (Deliver Ex Quay), and DDU (Deliver Duty Unpaid) being supplanted by DAT (Deliver at Terminal) and DAP (Deliver at Place). Incoterms restricted to water-borne freight (FOB, FAS, CFR, and CIF) are expected to remain the same. Actual definitions will be published by late summer or early fall. The firm is planning a late 2010 training session on the new Incoterms. Contact Sean Murray with questions.

FTZ APPLICATIONS

As of July 15, 2010, there were 62 formal applications pending at the Foreign-Trade Zones Board, of which 16 have received some level of written opposition. This represents 26% of all applications filed, the highest in the history of the Board. Expect processing time for all applications to increase. Clients and Grantees should be very careful when submitting any application to the Foreign-Trade Zones Board without careful review. Contact Scott Taylor with questions.

HTS CHAPTER 90

Reminding that classification in Chapter 90 is not always as easy as it appears, in a recent case the Court of International Trade classified thermal cyclers in Heading 8419 as laboratory equipment machines that heat materials instead of as automatic regulating or controlling instruments or apparatus in Heading 9032. [Applied Biosystems v U.S.](#), CIT Slip Op. 10-72 (June 28, 2010).

GSP

- On June 29, President Obama issued [Proclamation 8539](#), amending the Harmonized Tariff Schedule of the United States to modify duty-free treatment and certain designations under the General System of Preferences (GSP). 75 Fed. Reg. [38906](#) (July 6, 2010).
- The Office of the U.S. Trade Representative has announced an August 3 submission deadline for the 2010 annual GSP review. 75 Fed. Reg. [41724](#) (July 15, 2010).

NEW DRAFT TRADE BILL

The House Ways and Means Committee has posted a [draft manager's amendment](#) to the Miscellaneous Trade and Technical Corrections Act of 2009 (H.R. 4380). The Committee is seeking comments on the proposed legislation, which should be submitted as soon as possible. Clients with legislation should confirm it is in this amendment. The goal is final action this year.

ENCRYPTION CONTROLS

The Bureau of Industry and Security (BIS) has published a 104 page "simplification" to the export regulations relating to encryption. Many products will be excluded for controls. BIS also [published](#) a FAQ document. 75 Fed. Reg. [36482](#) (June 25, 2010).

EAR UPDATES

The BIS has issued three separate notices of change to the Commerce Control List (CCL) and the Export Administration Regulations (EAR):

- Clarifying Export Control Classification Numbers (ECCNs) 0A982, 0A983, 0E018, 4E992, 4E993, 4A991 8A018, 9A0184A003, 4A994, 5A001, 7A008, and 9E003;
- Removing ECCNs 4B994 and 4C994;
- Clarifying the use of License Exception LVS;
- Changing the Country Chart for Regional Stability Category 2 (RS2);
- Proposing a new ECCN 6A981 for Infrasound Sensors; and
- Adding ECCN 0A981 for equipment designed for executions and expanding the coverage of crime control devices in ECCN 0A978. 75 Fed. Reg. [36511](#) (June 28, 2010); 75 Fed. Reg. [37742](#) (June 30, 2010); 75 Fed. Reg. [41078](#) (July 15, 2010).

C-TPAT

- Introduced on June 28, 2010 by Congressman William Owens (D-N.Y.), H.R. 5619 proposes to expand C-TPAT eligibility for third party logistics providers (3PLs).
- Korea and the U.S. have [signed](#) a mutual recognition arrangement for Korea's Authorized Economic Operator program and C-TPAT.

WTO RULINGS

The WTO has ruled in favor of the U.S. in its disputes with the European Union over commitments under the Information Technology Act. The USTR has issued a [fact sheet](#) summarizing the findings of the Airbus ruling.

CHEMICAL RESIDUE

In a speech to a chemical industry group, Todd Owen, Customs Executive Director of the Cargo & Conveyance Security division acknowledged that Customs is still not enforcing its chemical residue reporting requirement for "empty" tank trailers and tank cars. Prior to enforcement of the issue, notice will be provided to industry. Mr. Owen also indicated that it would likely take legislative action, not just a regulatory update, to block the Customs reporting requirement.

FDA DELAYS

The District of Columbia District Court has dismissed a Del Monte claim that the FDA engaged in a pattern of delay in sampling imported produce that caused a loss in both freshness and value. The court ruled that a claim must be specific to an instance of FDA inspection, and not a general claim that attempts to make "wholesale improvements" to FDA's procedures, which is beyond the scope of the court's review. [Del Monte Fresh Produce N.A., Inc. v U.S.](#), DCDC Slip Op. 08-02161 (April 19, 2010).

MID-YEAR IMPORT TRENDS

Customs has issued its FY 2010 Mid-Year Report on [Import Trade Trends](#) which indicates a moderate recovery in trade compared to the first 6 months of 2009. The total value of imports for FY 2009 was \$1.7 trillion, and if the recovery trend continues, Customs projects imports for FY 2010 will reach \$1.8 trillion.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 7/15/10		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	274	257
SUBZONES	658	513
PENDING		
ZONES	1	
SUBZONES	28	
MISCELLANEOUS	38	
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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