

# BRIEFINGS

VOLUME 22 NO. 8

August 15, 2010

## TARGETING

In July 21, 2010 Senate testimony, Customs Commissioner Alan Bersin stated that Customs plans to involve additional government agencies in the Customs Commercial Targeting and Analysis Center (CTAC).

## COMMODITY JURISDICTION

• The Bureau of Industry and Security (BIS) has issued an Interim Final Rule reminding that BIS classification determinations do not determine jurisdiction. Jurisdiction can only be determined through a Commodity Jurisdiction (CJ) request to the Director The Directorate of Defense Trade Controls (DDTC). Thus, a company that obtains an Export Control Classification Number (ECCN) ruling from BIS cannot assume that BIS actually controls the export of that product. 75 Fed. Reg. [45052](#) (Aug. 2, 2010).

• CJs must now be processed on a new DS-4076 form which must be filed electronically after September 1. 75 Fed. Reg. [46843](#) (Aug. 4, 2010).

## FTZ BOARD

The Foreign-Trade Zones Board has requested comments by September 3, 2010 on two proposed changes to the Alternative Site Framework option for Grantee organizations. The changes would eliminate the requirement that individual sites are allocated a certain number of acres for activated status within the designated FTZ area and ease the current requirement for service area letters from local jurisdictions. Contact Scott Taylor with questions. 75 Fed. Reg. [46916](#) (Aug. 4, 2010).

## WINTER SEMINARS

We have four additional seminars scheduled for 2010:

- Nov. 9, 2010 - Import/Export 101
- Nov. 10, 2010 - Import/Export 201 (including Incoterms 2010)
- Dec. 7, 2010 - FTZ 101
- Dec. 8, 2010 - FTZ 201

More information is available on our website. Register by email to [Penny Freeman](#).

## AES WARNINGS

The Automated Export System (AES) will start [issuing](#) warnings whenever the following International Organization for Standardization (ISO) country codes are used: IR (Iran), KP (North Korea), SD (Sudan), CU (Cuba), PN (Pitcairn Island), IS (Iceland), and NI (Nicaragua). We have seen many of these codes have been used incorrectly (e.g., IR for Ireland) without detection by companies.

## ISF ENFORCEMENT

• Customs indicated in the August 4 meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC) that it would begin issuing Liquidated Damages in the 3<sup>rd</sup> Quarter for ISF violations and deficiencies.

• Customs has again updated its FAQs for ISF 10+2 filings.

## NEW LEBANON SANCTIONS

The Office of Foreign Asset Controls (OFAC) has published new Lebanon sanctions. 75 Fed. Reg. [44907](#) (July 30, 2010).

## LACEY ACT DEFINITIONS

The Animal and Plant Health Inspection Service (APHIS) has published a Proposed Rule that gives the USDA and the Department of the Interior authority to define "common cultivars" and "common food crops" by regulation. The terms are included in the exemptions to the Lacey Act Amendments. Comments are due by October 4. 75 Fed. Reg. [46859](#) (August 4, 2010).

## THIRD COUNTRY NATIONALS

The State Department has announced a change to the "Third Country National Rule" in the International Traffic in Arms Regulations (ITAR). The new rule suspends the necessity of acquiring an export license for dual or third country nationals in many situations. In its place is a new screening requirement. Contact Chuck Ballard with questions. 75 Fed. Reg. [48625](#) (August 11, 2010).

## MISCELLANEOUS TRADE BILL

President Obama signed into law the Miscellaneous Trade Bill (renamed the U.S. Manufacturing Enhancement Act of 2010) (H.R. [4380](#)) on August 11, 2010. The bill includes hundreds of duty-suspension provisions.

## AGENTS

The Foreign Manufacturers Legal Accountability Act (H.R. [4678](#)) was passed out of the full House Committee on Energy and Commerce. This bill provides a requirement that an agent must be authorized to accept service of process on behalf of a foreign subsidiary or parent for possible legal actions.

## KOREA FTA

- Office of the U.S. Trade Representative (USTR) is examining the ways that any changes to the already negotiated FTA with South Korea can be implemented without jeopardizing the expired "fast track" trade promotion authority status.
- 110 members of the House of Representatives have requested a meeting with President Obama to discuss major changes to the FTA with South Korea.
- The U.S. Trade Representative Ron Kirk testified on August 4, 2010 that he hopes Congress will restore fast track negotiating authority.

## FIRST SALE AND ORIGIN

In a response to a May 28 letter from trade and industry groups, Customs Commissioner Alan Bersin stated that Customs is withdrawing its proposal to change "first sale rule" but is planning action on its June 2008 proposed rule regarding use of a uniform tariff shift for country of origin determinations.

## IP PROTECTIONS

Customs has issued a [news release](#) announcing that copyright and trademark holders may now provide Customs their production identification guides electronically.

## DIRECT PRODUCT RULE

The BIS has expanded the "direct product rule" - controlling the export of foreign made products that are made with U.S. technology - to include the four terrorist supporting countries of Iran, North Korea, Sudan, and Syria. 75 Fed. Reg. [44887](#) (July 30, 2010).

## BUY AMERICAN

Customs has issued an expansive interpretation of "Buy American Act" requirements, concluding that foreign components assembled into a finished product in the U.S. by installation of U.S. software results in a substantial transformation for U.S. government procurement purposes. 75 Fed. Reg. [47609](#) (August 6, 2010).

## ATPA/ATPDEA

The USTR has announced its annual review of the Andean Trade Preference Act (ATPA)/Andean Trade Promotion and Drug Eradication Act (ATPDEA). Comments are requested by September 15. 75 Fed. Reg. [47878](#) (Aug. 9, 2010).

## AES HTS UPDATED

The Automated Export System (AES) has been [updated](#) to accept the latest HTSUS changes. No updates were made for the Schedule B. The list of HTS Codes that are not available for AES have also been [updated](#).

## FDA UPDATES

Revisions to Food and Drug Administration Product Codes took effect on July 24. CSMS [#10-000185](#) (July 29, 2010).

## FTA LABOR RIGHTS

The USTR announced the first labor case against a free trade agreement party. The case will be filed against Guatemala under CAFTA-DR, and alleges that Guatemala is not enforcing its own labor laws.

## CHINA WTO COMPLIANCE

The USTR is seeking public comment by September 27, on China's compliance with World Trade Organization commitments. 75 Fed. Reg. 45693 (Aug. 3, 2010).

## UNKNOWN MIDS

Customs is discontinuing the use of the unknown Manufacturer's Identification Number (MID) to report the manufacturer or supplier. After September 15, 2010, entries reporting with unknown MIDs will be rejected by the Automated Broker Interface (ABI). CSMS [#10-000187](#) (August 8, 2010).

## WCO AGENDA

The World Customs Organization has [published](#) its draft agenda for the 46<sup>th</sup> session of the Harmonized System Committee, including Explanatory Note changes for the year 2012.

## AGOA

In an August 3 speech at the 2010 AGOA Forum on U.S. - sub-Saharan Africa Trade and Economic Cooperation, Secretary of State Clinton indicated that AGOA has achieved only modest results, with petroleum products still accounting for the vast majority of exports to the U.S. The focus will be on ways to diversify AGOA exports, improve infrastructure to facilitate trade expansion, and stem corruption within governments.

## FOREIGN TRADE BARRIERS

The USTR has requested that interested parties provide examples of barriers to U.S. exporters. 75 Fed. Reg. [47675](#) (August 6, 2010).

## EXPORT DETENTIONS

Customs outlined in a recent public webinar the export detention process, how it becomes a seizure, and some of the reasons for them, including late or no Automated Export System (AES) filing, inappropriate use of exemptions, fraudulent values, no DSP-61 for temporary exports, using a forwarder not on the export license, referencing an implacable license, and omitting the ECCN on the AES information.

## COMPREHENSIVE LICENSES

The BIS has requested comments by September 24 regarding the Special Comprehensive License (SCL) program. SCLs allow multiple exports and re-exports, among other activities, without obtaining a license for each end user. 75 Fed. Reg. [43486](#) (July 26, 2010).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 8/15/10		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	274	257
SUBZONES	659	514
PENDING		
ZONES	1	
SUBZONES	27	
MISCELLANEOUS	35	
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