

# BRIEFINGS

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## PROTOTYPE PROVISION

Customs has issued a new ruling that broadly interprets the duty-free HTSUS subheading 9817.85.01 (i.e., the "Prototype Provision"). In a ruling the firm helped secure with Eli Lilly, Customs Headquarters agreed that materials imported under the Prototype Provision could be subject to further manufacturing as part of their testing and development. Contact Sean Murray with questions. HQ [H108097](#) (April 12, 2011).

## ANTIDUMPING AND KITS

The Court of International Trade (CIT) has remanded an antidumping duty (ADD) scope ruling involving a household tool kit to Commerce, looking for a consistent test for "mixed-media" items or sets. This matter must be closely watched because it will likely lead to specific guidance on the treatment of kits containing ADD merchandise. [MidContinent Nail Corporation v. U.S. and Target Corp.](#) CIT Slip Op. [11-55](#) (May 17, 2011).

## ABI PGAs

Customs has posted an expanded draft [chapter](#) for the Participating Government Agency (PGA) Message Set for the Automated Broker Interface (ABI) Customs and Trade Automated Interface Requirements (CATAIR). The update includes additional data elements that Customs will provide electronically to the PGAs to approve cargo imports. Once the PGA data set is fully implemented, it will be available in ACE and ACS transactions. The data elements should be carefully reviewed.

## AES PENALTIES

In a June 14 Bureau of Industry and Security (BIS) Technical Advisory Committee meeting, a Census official indicated that approximately 130 penalties for Automated Export System (AES) filing issues are being issued each month. The standard amount for AES penalties is \$10,000. The ports of Chicago, Los Angeles, and New York are issuing the most penalties. The primary reasons cited for the penalties are late AES filings and incorrect port of export listings. Clients need to have robust procedures in place to ensure accurate and timely AES filings, and to mitigate penalties.

## STA LICENSE EXCEPTION

The BIS has issued its Final Rule on the Strategic Trade Authorization (STA) license exception. The exception allows some exports to 36 countries where the risk of diversion is believed to be low. There are requirements for exporters and consignees to use the exemption. Contact Chuck Ballard with questions. 76 Fed. Reg. [35276](#) (June 16, 2011).

## CBPF 28 & 29 GUIDANCE

Customs has issued a [reminder](#) to ports that CBP Form 28 should be issued only when there is insufficient information to determine the admissibility, value or classification of imported merchandise, and not to request proof of a power of attorney or notify of a formal investigation. The reminder also advised that CBP Form 29 should be used to inform importers of incorrect values or quantities, and may be used to notify of an investigation.

## FTZ BOARD REGULATIONS

The public comment period on the proposed changes to the FTZ Board Regulations closed on May 26. Over 100 comments were filed. A comment period for rebuttals ends June 27. The FTZ Board is expected to respond before the end of the year. Contact Marshall Miller with questions.

## ISF

- Effective June 18, 2011, Customs will no longer issue Importer Security Filing (ISF) warning messages for edits relating to bond data and carnet data. Filers need to ensure that ISF transactions are fully compliant with these edits because rejections will be issued. CSMS [#11-000116](#) (June 2, 2011).
- Customs has stated that it is likely to begin ISF liquidated damages enforcement before the end of the summer. Clients should be reviewing compliance rates for existing ISF filings and implementing enhanced processes.

## ADVANCE MANIFEST

Customs has amended its mitigation guidelines, effective May 25, 2011, for the failure of arriving carriers to provide the required advance electronic cargo data. The guidelines:

- Extend mitigation only to C-TPAT validated (not just certified) members in good standing;
- Add a maximum of \$100,000 per conveyance arrival for liquidated damages claims; and
- Define a "subsequent violation" as the same type of violation of the same regulation more than 30 days old. [45 Cust. B. & Dec. 1](#) (May 25, 2011).

## PERSONAL ITAR CHARGE

A Colorado man has been [charged](#) personally for criminal International Traffic in Arms Regulations (ITAR) violations in connection with the transfer of technical drawings for defense articles to Korean manufacturers. In 2010, his prior employer pled guilty to criminal ITAR charges and settled a separate civil investigation involving the same violations.

## ITAR DUAL NATIONALS

The Directorate of Defense Trade Controls (DDTC) has released a new rule for handling third-country nationals at licensee facilities. Under the new rule, licensees are required to screen employees and maintain records of that screening. The new rule should eliminate much of the previously required licensing of individuals. 76 Fed. Reg. [28174](#) (May 16, 2011).

## DoD BUY AMERICAN

The Department of Defense has issued a Proposed Rule to change the Defense Federal Acquisition Regulations definition of "qualifying country end product" by eliminating the component test for commercially available off the shelf (COTS) products. Comments are due by August 5. 76 Fed. Reg. [32845](#) (June 6, 2011).

## BAE DDTC FINE

BAE Systems has agreed to pay \$79 million in fines for [violations](#) related to unauthorized brokering of U.S. defense articles and services and failure to maintain proper records. DDTC has instituted a limited policy of denial for 3 non-U.S. BAE subsidiaries.

## WASSENAAR CHANGES

To implement the updates from the December 2010 Wassenaar Plenary Meeting, BIS has updated the Export Administration Regulations and 53 items on the Commerce Control List. The BIS also issued corrections on June 14. 76 Fed. Reg. [29610](#) (May 20, 2011) and [34577](#) (June 14, 2011).

## REGULATIONS REVIEW

The Departments of Homeland Security (DHS), Treasury, and Commerce have each posted plans for implementing President Obama's regulatory efficiency review:

- The DHS [Preliminary Plan](#) includes obtaining input from the Advisory Committee on Commercial Operations and the Trade Support Network. Contact Linda King, our TSN representative, with suggestions.
- Treasury's [regulatory review](#) includes a joint Customs/Treasury proposal to make liquidation reports available through ACE and the removal of certain OFAC regulations.
- Commerce's [Preliminary Plan](#), focuses on regulatory changes to implement the President's Export Control Reform Initiative and the International Trade Administration changes to AD/CVD regulations.

## GOOD DEED FOR THE DAY

Customs recently [seized](#) more than 1,900 Karaoke machines at the Los Angeles/Long Beach Seaport after discovering they contained counterfeit SD logos.

## FDA UPDATES

- The Food and Drug Administration (FDA) has updated Import Alert [#99-33](#) to change the list of Japanese prefectures subject to detention without inspection and add bamboo shoots and ostrich ferns.
- The FDA has also issued a [letter](#) alerting manufacturers of medical devices and related electronic products or components to take precautions to ensure the safety of products imported from Japan.
- In a [webinar](#), the FDA Division of Foreign Field Investigations indicated that in FY2010 there were 775 inspections, but they expect a total of 2,800 in FY2011.
- The Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT) [briefing slides](#) were recently updated.

## MACHINE CLASSIFICATION

In [BenQ America Corp. v. U.S.](#), the Court of Appeals for the Federal Circuit (CAFC) struck down a Court of International Trade (CIT) decision classifying multi-function LCD monitors in HTSUS (2004) Heading 8471 (duty-free) as computer monitors, and not as video monitors in Subheading 8828.21.70 (5%). The CAFC remanded the case to the CIT to determine the "principal use" of the LCD monitors. CAFC Slip Op. [2010-1259](#) (May 27, 2011).

## WTO PANEL ON U.S. COO

A World Trade Organization (WTO) dispute panel has issued a [preliminary ruling](#) which found that U.S. country of origin labeling requirements for certain meats and "dolphin safe" labels on tuna violate the WTO Agreement on Technical Barriers to Trade.

## BYRD AMENDMENT

Customs has announced the distribution of Fiscal Year 2011 antidumping and countervailing duties under the Byrd Amendment. Customs must receive a certification by July 26 to issue a distribution. 76 Fed. Reg. [31020](#) (May 27, 2011).

## PSC FUNCTIONALITY

Customs has announced two revised ACE ABI CATAIR chapters on Post Summary Corrections (PSCs). Customs has also posted a PSC User Guide. Customs deployed PSC functionality in ACE on June 4, 2011. CSMS [#11-000105](#) (May 17, 2011).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/11		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	276	259
SUBZONES	675	528
	PENDING	
ZONES	2	
SUBZONES	21	
MISCELLANEOUS	32	
	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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