

ATTORNEYS AT LAW

ROUTING SLIP

BRIEFINGS

10 + 2 PUBLISHED

Customs has finally issued its Proposed Rule on "10 + 2." It will have a significant impact on all imports and should be carefully reviewed. Initially, the rule applies only to vessel cargo imports. Importers will be required to provide an Importer Security Filing (ISF) of 10 data elements at least 24 hours prior to loading the cargo on the vessel. The 10 data elements include: manufacturer, seller, buyer, consolidator, and ship-to names and addresses; container stuffing location; importer of record and consignee numbers; country of origin; and HTSUS. Manufacturer, origin, and HTSUS must be linked for each HTSUS subheading at the line item level. Special rules apply to FTZs, IEs, and T&Es. Comments on the Proposed Rule are due March 3, 2008. 73 Fed. Reg. [90](#) (Jan. 2, 2008); 73 Fed. Reg. [1299](#) (Jan. 8, 2008). Please contact Sean Murray or Michael Utchell with questions or for assistance in drafting comments.

CENSUS/AES DISCLOSURES

Miller & Company previously developed an informal voluntary self-disclosure (VSD) process in consultation with Census. Census has now recognized this process in published [guidance](#). We understand that Census intends to formalize this process in a Foreign Trade Regulations provision. We also understand that Census intends to reward VSDs with no penalties unless violations or VSDs continue.

2008 SEMINAR SCHEDULE

- We have scheduled 3 Advanced Seminars for Spring 2008:
 - **March 4-5** - Exports
 - **April 15-16** - Valuation
 - **May 20-21** - Classification
- Our client-only, free seminars for Spring 2008:
 - **Jan. 23-24**: FTZs
 - **Feb. 19-20**: Import/Export 101
- More information is available on our web site. All seminars are on a first-come, first-served basis. Register now by e-mail to Kelly Galate at kgalate@millerco.com.

MANDATORY AES

The Census Bureau and Customs indicate that they have agreed on the language for a Final Rule making the Automated Export System (AES) mandatory for all export reporting and authorizing Customs to enforce the Census regulations. The Final Rule is still in interagency review, but is expected to be published this spring, with a 90-day implementation period. No details are yet available on the contentious issues of information sharing with foreign governments and post-export filing ("Option 4"). With the Final Rule, we expect that Census will begin issuing its new penalties of up to \$10,000 per violation.

IPR ENFORCEMENT

Customs has posted [instructions](#) on obtaining intellectual property rights (IPR) enforcement assistance.

PRODUCT SAFETY

- The *Seattle Times* has [reported](#) that the Consumer Product Safety Commission (CPSC) will add full-time staff at some of the nation's busiest ports and be given access to Customs data on U.S.-bound shipments so that CPSC staff can help target high-risk products.
- The House of Representatives has passed [H.R. 4040](#), the "Consumer Product Safety Modernization Act." Several sections would directly impact imports/exports: Section 213 (prohibiting export of non-conforming and recalled products), Section 214 (prohibiting import of non-conforming and recalled products), and Section 224 (study on CPSC import authority). A Senate version ([S. 2045](#)) was introduced on December 5, 2007.
- CPSC acting chair, Nancy Nord, announced in a January 7 speech that the agency is considering a regulatory shift from product manufacturers to the retailers who import foreign-manufactured products.

GAO ON DDTC EXPORTS

The Government Accountability Office (GAO) has issued a [report](#) critical of the Directorate of Defense Trade Controls (DDTC)'s backlog in processing export license and noting a 20% increase in cases from 2003 to 2006, a near doubling in processing time, and a 50% increase in open cases to a high of 10,000 in September 2006.

FALSE CLAIMS

The U.S. Department of Justice has settled a \$3.1 million civil claim under the False Claims Act ([FCA](#)) with Premier Manufacturing, Inc. for deliberately understating the weight of imported cigarettes in order to underpay Customs duties. The FCA provides treble damages for false claims made to the U.S. Government involving monetary obligations.

CBP AUDIT

An outside audit of Customs has found "significant deficiencies" in the areas of drawback, information technology, and the entry process. Foreign-trade zones were included in the entry process audit, and it was found that: (1) ACS has no complete list of FTZs; (2) ports were using inconsistent procedures for risk assessment and compliance review; and (3) results were not timely provided to Customs HQ for review.

HTSUS-EXPORTS

The Census Bureau has published an updated [list](#) of 180 HTSUS classifications that are invalid for reporting exports, either in AES or on a paper Shipper's Export Declaration, and for which the appropriate Schedule B numbers must be used.

AGRICULTURE POSITION

Customs has created a new position and appointed Kevin Harriger as Deputy Executive Director, Agriculture Operational Oversight, to increase focus on agricultural issues.

TRAVEL DOCUMENTS

Customs has issued a reminder that, effective January 31, oral declarations of citizenship will no longer be accepted. Travelers claiming U.S., Canadian, or Bermudian citizenship will be required to present proof of citizenship and a government-issued photo ID when entering the U.S. through land and sea ports of entry. 72 Fed. Reg. [72744](#) (Dec. 21, 2007).

FIRM PROGRAMS

The Firm has its own software for turning government trade data into activity reports and compliance management tools. It is time to order calendar year 2007 U.S. [import/export](#) records. Contact Marshall Miller or Brenda Zeller for details.

The Firm recently completed an extensive [review](#) of most of the major Restricted Party Screening (RPS) programs. For a modest fee we can provide a detailed memo and assist in determining an appropriate RPS program for your company. Contact Mark Teerink for details.

FTA

President Bush has [issued](#) Proclamation 8214, which makes numerous technical adjustments to the U.S. FTAs with Chile and Singapore to continue staged duty reductions and change rules of origin throughout the HTSUS. Clients should closely scrutinize the detailed rule of origin changes for impact. 73 Fed. Reg. [1437](#) (Jan. 8, 2008).

President Bush [signed](#) the U.S.-Peru FTA Implementation Act on Dec. 14, 2007. Additional changes to U.S. and [Peruvian laws](#) must still be made, such as amending the HTSUS. Upon implementation, the FTA will immediately make 80% of U.S. consumer and industrial products exports to Peru duty free.

The USTR has [confirmed](#) that as of January 1, 2008, [NAFTA](#) is [fully effective](#) for Mexico. Restrictions on U.S. exports to Mexico of agricultural commodities such as corn, certain beans, milk, and corn syrup have been removed, as well as restrictions on Mexican sugar exports to the U.S.

FTZ ANNUAL REPORTS

As part of its regular information gathering, the U.S. International Trade Administration has requested comments by February 25, 2008, on the current annual report submission process and potential automation of the process. 72 Fed. Reg. [72987](#) (Dec. 26, 2007).

PIPELINE ON ITAR ARTICLES

Chicago Customs has issued a [Pipeline](#) on exports and temporary imports of defense articles, including proper handling of import licenses, license value issues, AES requirements, and Customs entry requirements.

ITAR AMENDMENTS

The Directorate of Defense Trade Controls (DDTC) has revised the International Traffic in Arms Regulations (ITAR) to:

- Allow access by dual or third-country nationals of NATO, the EU, Australia, Japan, New Zealand, and Switzerland who are employees of U.S. parties to a Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA). 72 Fed. Reg. [71785](#) (Dec. 19, 2007).
- Add countries subject to U.N. arms embargoes. 72 Fed. Reg. [71575](#) (Dec. 18, 2007).
- Establish a 60-day deadline after the initial notification to DDTC for filing final Voluntary Self Disclosures (VSD). 72 Fed. Reg. [70777](#) (Dec. 13, 2007).

ANTIDUMPING/ORIGIN FRAUD

The U.S. Court of International Trade recently allowed the maximum possible penalties (\$36.6 million with duties) to be assessed against metal importers for fraudulently declaring country of origin to avoid antidumping duties. [U.S. v. Matthews](#), CIT Slip Op. [07-188](#) (Dec. 28, 2007).

E-MANIFEST FOR TRUCKS

Truck [e-manifest](#) functionality has been deployed to all 99 land border ports. Customs will begin full enforcement on April 11, 2008, when the 90-day grace period ends for Alaska.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 1/15/08		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	271	256
SUBZONES	602	500
PENDING		
ZONES	1	
SUBZONES	20	
MISCELLANEOUS	23	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	8	
SUBZONES	8	