

BRIEFINGS

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10+2 (ISF) UPDATES

- Customs has issued a CSMS message reminding ISF filers that "full enforcement" of ISF requirements begins January 26, 2010, and providing information on avoiding "NO BILL ON FILE" messages and bond data submission. CSMS [#09-000371](#) (Dec. 16, 2009).

- Customs has amended its ISF Interim Final Rule to clarify liability by adding the liquidated damages clause found in other bond provisions (i.e., \$5,000 per violation) and makes clear that the Appendix D ISF bond may be used to cover single transactions. 74 Fed. Reg. [68376](#) (Dec. 24, 2009).

AGOA/GSP/ATPA

- President Obama has signed [H.R. 4284](#) to extend the benefits of the Generalized System of Preferences (GSP) and Andean Trade Preferences Act (ATPA)/Andean Trade Promotion and Drug Eradication Act (ATPDEA) programs until December 31, 2010.

- President Obama issued Proclamations [8467](#) and [8468](#) to modify the status of certain beneficiary countries under GSP and the African Growth and Opportunity Act (AGOA) duty-free programs. Countries impacted include Guinea, Madagascar, Niger, and Mauritania.

CUSTOMS BONDS

Customs has issued a Proposed Rule to centralize the processing of Continuous Importer Bonds at the National Finance Center in Indianapolis. The rule also includes the electronic submission of bond documentation. Comments are due March 8, 2010. 75 Fed. Reg. [266](#) (Jan. 5, 2010).

2010 TRAINING SEMINARS

Details on the firm's 2010 seminar schedule are on our [website](#). Our first session, a free, client-only Import/Export 101 scheduled for February 23-24, 2010, is already almost full. Register by e-mail to [Penny Freeman](#).

2010 HTSUS

The U.S. International Trade Commission (ITC) has [posted](#) the 2010 Harmonized Tariff Schedule to its website. The updated HTSUS reflects the amended list of GSP countries and extended Israel agricultural TRQs, the amended list of AGOA countries, the staged duty reductions under several Free Trade Agreements, and the adjusted NAFTA rules of origin. Units of measure have also been changed for some dairy products to specifically require reporting of milk solids content by kilograms. CSMS [#10-000004](#) (Jan. 7, 2010).

MISCELLANEOUS TRADE BILL

The House and Senate failed to pass a Miscellaneous Trade Bill before adjourning in 2009 and so duty-free or reduced duty treatment for hundreds of products expired on December 31, 2009. A Miscellaneous Trade Bill may be moved in early 2010 to re-authorize the expired provisions and could contain other provisions.

BIS

The Bureau of Industry and Security (BIS) has updated its [guidance](#) to Freight Forwarders on their compliance responsibilities, routed export transactions, and mitigating liability risks.

TRANSFER PRICING

Customs recently issued its most comprehensive analysis of related party valuation in several years. In HQ H029658 (Dec. 8, 2009) Customs ruled that transaction value existed in a related party sale between the foreign seller/manufacturer and the U.S. importer. Key factors considered by Customs included a bilateral Advanced Pricing Agreement ("APA") between the IRS and foreign tax authorities, Customs access to the documents filed with the IRS, the filing of a study pertaining to industry pricing practices, and the filing of countless commercial documents with Customs. Customs reliance on these factors in the ruling sets a high standard for reviewing other related party valuation methodologies. The reviewed methodology did not include any compensating adjustments, which could serve to limit the applicability of the ruling to other transfer pricing mechanisms. Contact Tom Lobred with questions.

FIRST SALE REPORT

The U.S. International Trade Commission has issued its [report](#) on the use of the "First Sale Rule" in U.S. imports from September 1, 2008 to August 31, 2009. It showed that only 2.4% of entries declared use of the first sale rule, with the most frequent users being importers of high duty products such as in the textile, apparel, and footwear industries. The report indicated that without additional data it was not possible to determine revenue loss or Customs value decrease from the use of the first sale rule. USITC Publ. No. 4121 (Dec. 2009).

ACE AD/CVD ENTRIES

Customs is delaying deployment of the ACE Entry Summary, Accounts, and Revenue (ESAR) III antidumping and countervailing duty (AD/CVD) entry processing and case management capabilities that were scheduled to be deployed on January 17, 2010. The delay is to allow more testing. 74 Fed. Reg. [69129](#) (Dec. 30, 2009)(notice of deployment); CSMS #[10-000015](#) (Jan. 14, 2010) (notice of delay).

OFAC FINES CREDIT SUISSE

In the largest penalty settlement in the history of the U.S. Office of Foreign Asset Controls (OFAC), Credit Suisse AG has reached a \$536 million [settlement](#) with OFAC for concealing wire transfers executed through its U.S. branches involving thousands of transactions over 20 years concerning sanctioned entities in Iran, Sudan, Cuba, Libya, Burma, and the Liberian regime of Charles Taylor. In addition, Credit Suisse agreed to implement an enhanced global regulatory compliance program.

DUTY FREE STORES

Customs has issued a Final Rule on Class 9 Bonded Warehouses/Duty-Free Stores that extends the blanket withdrawal procedure, creating a 20 day window for proprietors to file a Customs entry, to provide written documentation of overages, shortages, and damages, and to pay money owed based on the inventory discrepancies. The Final Rule also permits electronic recordkeeping systems to segregate duty-free merchandise from duty-paid merchandise. The rule goes into effect on January 28, 2010. 74 Fed. Reg. [68681](#) (Dec. 29, 2009).

REMOTE LOCATION FILING

Customs has issued a Final Rule making Remote Location Filing (RLF) a permanent Customs program. 74 Fed. Reg. [69015](#) (December 30, 2009).

SCHEDULE B

Census has [published](#) its list of 2010 HTSUS classifications that cannot be used in Automated Export System (AES) transmissions. Exporters are required to use Schedule B numbers instead. Not included in this list are HTSUS Chapter 98 classifications, which have always been invalid for use in AES transmissions.

ECCN GUIDANCE

The Bureau of Industry and Security (BIS) has [published](#) an advisory opinion regarding "secondary incorporation" when calculating *de minimis*. BIS advised that U.S. origin components incorporated into a foreign-made discrete product will not be counted in *de minimis* calculations when that foreign-made discrete product has been, in turn, incorporated into a subsequent foreign-made item.

TPP TRADE AGREEMENT

The Office of the U.S. Trade Representative has requested comments regarding the Obama Administration's intent to enter into negotiations on the Trans-Pacific Partnership (TPP) trade agreement with Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam. 74 Fed. Reg. [66720](#) (Dec. 16, 2009). Questions are already being raised in Congress concerning labor and environmental provisions.

FOOD IMPORTER DEBARRED

The Food and Drug Administration (FDA) recently [issued](#) its first debarment of a food importer. The debarment is for a period of 20 years. The seafood importer had previously been convicted of mislabeling Vietnamese catfish in order to avoid antidumping duties.

BROKER EXAM

The next Customs broker licensing exam is scheduled for Wednesday, April 7, 2010. Applications are due March 8.

LACEY ACT TIPS

The Animal and Plant Inspection Service (APHIS) has updated its [Lacey Act web page](#) to include a revised version of the [Lacey Act Primer](#) that includes information on the Act's amendments, recent enforcement examples, and suggested best practices. The web page also provides an example of a "Blanket Declaration Reconciliation Sample" spreadsheet.

BUY AMERICAN

- The Department of Defense (DoD) has adopted an Interim Rule issued in January 2009 which waives a requirement for certain contractors to track the origin of commercially available off-the-shelf components for U.S. made items sold to the DoD. 74 Fed. Reg. [68384](#) (Dec. 24, 2009).
- H.R. [2847](#), which passed the house on December 16, 2009, includes two new Buy American provisions pertaining to project applicability and waivers.

BAHRAIN FTA

U.S. Customs has adopted a Final Rule that waives a previous requirement that any good passing through a third party country must remain under control of the Customs authority of the third party. This change is effective January 28, 2010. 74 Fed. Reg. [68680](#) (Dec. 29, 2009).

USTR 2009 REVIEW

The Office of the United States Trade Representative (USTR) has posted its "[USTR's Year in Review](#)."

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 1/15/10		
	<u>APPROVED</u>	<u>CURRENTLY AUTHORIZED</u>
ZONES	273	256
SUBZONES	646	540
	<u>PENDING</u>	
ZONES	2	
SUBZONES	28	
MISCELLANEOUS	31	
	<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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