

# BRIEFINGS

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## NEW FTZ BOARD REGS

• The Foreign-Trade Zones Board has issued a Proposed Rule that includes a substantial number of revisions and additions to the existing FTZ Board Regulations. The Board's intent is to reduce the current level of Board filings and reporting, expedite processing time for new and changed zone projects, and quickly authorize "export only" manufacturing projects. The public comment period ends April 8, 2011, but it is expected that the Board will be receptive to requests for more time to comment on the proposed changes. The FTZ Board will be conducting a series of public forums throughout the U.S. We encourage you to attend. Clients are encouraged to provide thoughts on the proposed changes to Marshall Miller or Scott Taylor. 75 Fed. Reg. [82340](#) (Dec. 30, 2010).

• As General Counsel to the NAFTAZ, we are leading the effort to thoroughly analyze the proposed regulations and identify necessary changes. A January 13 NAFTAZ Webinar identified proposed changes. We encourage you to attend the NAFTAZ's Washington D.C. [program](#) on February 8, 2011, where the new regulations will be discussed.

## HR EXPORT ISSUE

Effective February 20, Section 6 of the new [I-129 visa application](#) for H1B, L-1, and O-1A visas requires the sponsor to certify that the technology and data the applicant will be exposed to, either does or does not require an export license. Contact Sean Murray or Chuck Ballard with questions on this new "deemed export" certification requirement.

## 2011 TRAINING SEMINARS

Details on the firm's 2011 seminar schedule are on our [website](#). The spring sessions include:

- April 5, 2011 - FTZ 101
- April 6, 2011 - FTZ 201
- May 3, 2011 - Import/Export 101
- May 4, 2011 - Import/Export 201 (including Incoterms 2010)

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

## 2011 HTS

The International Trade Commission has [posted](#) the 2011 Harmonized Tariff Schedule on its website. Some changes occurred too late to appear in the January 1, 2011 print version, and changes resulting from the 2010 Omnibus Trade Act are not yet included in either version. Notable changes are in the NAFTA General Notes and at the statistical level.

## OMNIBUS TRADE ACT

[H.R. 6517](#), the Omnibus Trade Act signed into law by the President (P.L. 111-344), extended the Andean Trade Preferences Act (ATPA) for six weeks and the Trade Adjustment Assistance (TAA) program for displaced workers, but did not renew GSP or include the Miscellaneous Trade Bill. As a result, GSP expired for most beneficiary countries on December 31. GSP and the MTB are expected to be re-considered in 2011. Special procedures are in effect for GSP declarations during this interim time period. CSMS [#11-000001](#) (Jan.3, 2011); CSMS [#11-000003](#) (Jan. 3, 2011).

## FTZ APPLICATIONS

The FTZ Board must determine production proposals to be "in the public interest." The Board recently approved two controversial applications with restrictions:

• Dow Chemical's application involving silicones manufacturing was [approved](#) with a restriction that prohibits the admission of foreign-status silicon metals subject to an antidumping or countervailing duty order. The first Antidumping/Countervailing Duties (AD/CVD) - restricted silicone metal subzone application, for MPM Silicones, was approved in 2008 with volume restrictions and an initial five year time limit. Restrictions were also previously placed on Hoku Materials, Inc. (2009) and REC Silicon (2011). 76 Fed. Reg. [771](#) (Jan. 6, 2011).

• A Thyssen Krupp application, for a stainless and carbon steel product manufacturing facility, was [approved](#) with the restriction that Privileged Foreign status must be elected on all foreign status ferrosilicon, molybdenum, and titanium admitted to the subzone and an initial five year time limit. This is a significant change from the Preliminary Examiner's Report, which recommended approval for export only. 76 Fed. Reg. [87](#) (Jan. 3, 2011).

## NEW BOND FORMULAS

Customs has issued revised [guidance](#) for calculating Activity Code 1 importer bonds. The primary change is a move from considering the previous calendar year to considering the previous 12 months. Revised bond formulas are also provided for unpaid bills and AD/CVD orders.

## GOVERNMENT CONTRACTS

The 9/11 First Responders bill signed into law on January 2 (Public Law [111-347](#)) includes a provision imposing a 2% excise tax on foreign contractors receiving certain Federal procurement payments. The tax exempts goods produced in countries that are parties to an international procurement agreement with the U.S. Contact Sean Murray with questions.

## EXPORT CONTROL REGS

As a reminder, comments are due soon for several significant export proposals:

- February 7 - adding the Strategic Trade Authorization License Exception (STA) and restructuring the Commerce Control List. 75 Fed. Reg. [76653](#) (Dec. 9, 2010); 75 Fed. Reg. [76664](#) (Dec. 9, 2010).
- February 8 - restructuring the U.S. Munitions List (USML) and revisions to Category VII. 75 Fed. Reg. [76930](#) (Dec. 10, 2010); 75 Fed. Reg. [76935](#) (Dec. 10, 2010).

## ENCRYPTION CHANGES

The Bureau of Industry and Security (BIS) has announced changes to the encryption regulations to clarify the "publicly available" mass market exception. 76 Fed. Reg. [1059](#) (Jan. 7, 2010).

## SUPPLY CHAIN SECURITY

- In a published [speech](#), Department of Homeland Security (DHS) Secretary Janet Napolitano reviewed recent DHS international trade security efforts, including a global effort to prevent the diversion of precursor chemicals used in IEDs, and announced DHS work with the World Customs Organization and other international partners to strengthen cargo screening and trade resumption plans.
- The recent National Defense Authorization Act includes a provision allowing exclusions of companies based on supply chain risk. Public Law No. [111-383](#) (Jan. 7, 2011).

## PHARMACEUTICAL APPENDIX

The fourth round of updates to the Pharmaceutical Appendix (PA) went into effect January 1. However, the recent Court of International Trade (CIT) decision in [Roche Vitamins, Inc. v. U.S.](#) provides a cautionary tale for PA use. The CIT denied summary judgment for Roche, saying trial was necessary to determine the classification of a beta-carotene powder as a coloring matter (Heading 3204), provitamin (Heading 2936), or food (Heading 2106). A side issue that could have substantial consequences is an argument that the beta-carotene coloring matter/vitamins are entitled to duty free entry under the PA regardless of use. Contact Sean Murray with questions. [Slip Op. 10-140](#) (Dec. 23, 2010).

## FDA

- The Food and Drug Administration (FDA) has issued a [report](#) on the FDA Transparency Initiative, pledging to work with Customs to develop a process to correct inadvertent data errors and publicize FDA rules. The FDA is seeking comments by March 8, 2011, on five proposals, including modifying FDA's current procedures for evaluating importers and brokers.
- The FDA Food Safety Modernization Act ([H.R. 2751](#)), was signed into law on January 4, 2011. The act modernizes the food safety system to better prevent food-borne illness and respond to tainted food issues. Importers will need to implement foreign supplier verification programs within two years. It also imposes an annual fee to fund a voluntary qualified importer program.

## AGOA

Presidential Proclamation 8618, modifies the African Growth and Opportunity Act (AGOA) and the U.S.-Israel FTA, and adds the fourth round of Pharmaceutical Appendix updates to the HTSUS, effective January 1. 75 Fed. Reg. [81077](#) (Dec. 27, 2010).

## PROTESTS

Customs has finally issued a Final Rule making changes to Parts 173 and 174 of the Customs Regulations to reflect the 2004 statutory changes to the Protest process, particularly for clerical errors, mistake of fact, and other inadvertencies. Clients are reminded that Protest filing requirements are very technical, and non-compliance allows Customs to reject the Protest. 76 Fed. Reg. [2573](#) (Jan. 14, 2011).

## FTAs

- The USTR has indicated that the recently negotiated Korea-U.S. FTA supplemental agreement should be completed by late January or early February, and that the goal is passage by July 1.
- Customs has issued an Interim Rule, effective January 6, 2011, regarding the Oman FTA. Comments are due by March 7, 2011. 76 Fed. Reg. [697](#) (January 6, 2011).

## C-TPAT

- Customs has posted a [registration notice](#) for its two C-TPAT seminars to be held in March and June 2011 in San Diego and New Orleans.
- Customs has posted step-by-step [instructions](#) on completing the required C-TPAT annual review of security profiles and also updated its related [Frequently Asked Questions](#) document.
- According to a recent [report](#) issued by the Transportation Security Administration (TSA), drug smugglers have used C-TPAT company shipments.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 1/15/11		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	275	258
SUBZONES	669	525
PENDING		
ZONES	2	
SUBZONES	20	
MISCELLANEOUS	29	
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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