

BRIEFINGS

ROUTING SLIP

BIS UPDATE 2004

BIS held its Annual Update Conference last week in Washington:

- Census has again delayed its expected release of revisions to the Foreign Trade Statistic Regulations. Items to be included, such as mandatory AES filing for all exports, audit and prior disclosure provisions, and new penalty provisions will be implemented Fall 2005.

- Expect focused enforcement efforts on the "Deemed Export" provision in the Export Administration Regulations (EAR). Any release of technology or source code subject to the EAR to a foreign national in the U.S. or elsewhere is a deemed export. The release may include tours, meetings, research, etc. Clients should carefully examine this subject.

- The BIS has issued a proposed rule that would revise the Export Administration Regulations (EAR) by updating and significantly expanding "red flags: guidance, amending the definition of "knowledge" in several ways including a "reasonable person" standard, providing a limited liability "safe harbor" and other changes. Comments are due November 12, 2004. 69 Fed. Reg. [60829](#) (Oct. 13, 2004).

- BIS is reviewing the foreign policy-based export controls in the Export Administration Regulations (EAR) to determine whether they should be modified, rescinded or extended. Written comments are due November 19, 2004. 69 Fed. Reg. [57895](#) (Sept. 28, 2004).

FIRM SEMINAR

The firm will be hosting a free seminar for clients on Customs, trade, and foreign-trade zone current issues on Oct. 26 in the Gazebo room at 6:30 pm during the NAFTA Convention at the Westin Resort Hilton Head Island, South Carolina. Contact Janet Haynes for registration.

FSC/ETI

- Both the House and the Senate passed Conference Bill H.R. [4520](#), repealing FSC/ETI. The Bill has not yet been signed into law by the President. The World Trade Organization (WTO) ruled FSC/ETI provided illegal export subsidies. Do not expect quick sanction withdrawal action.
- Included in H.R. 4520 is a temporary duty free classification in Chapter 99 for ceiling fans.

2004 MISC. TARIFF BILL

The Senate adjourned on October 11 without approving the Miscellaneous Tariff Bill because of a provision granting MFN status to Laos. The Senate will revisit the Bill again in November when it reconvenes for a lame-duck session.

WOOD PACKAGING RULES

The APHIS issued its final rule effective Sept. 16, 2005 for wood packaging material (WPM). The definition of WPM has been modified. APHIS will focus on education through Sept. 16, 2005 for non-compliant WPM. Thereafter, re-exportation will be required for non-compliant WPM. 69 Fed. Reg. [55719](#) (Sept. 16, 2004).

FTZ DEVELOPMENTS

- Customs and FDA will prepare and issue a "joint procedure" on weekly entry. The current processes will change for some clients as FDA has agreed to accept electronic estimated CBPF 3461s.

- Customs has determined that the CBPF 214 will be automated by using a CBPF 7501 module with a new type code for CBPF 214 use. It is expected to be available by June 2005. Once implemented, there will no longer be a need for the monthly Census reporting process.

- The NAFTAZ has proposed a number of changes to management activity and amendments to the FTZ Regs including; codifying temporary removal, expanding authorized parties for direct delivery, origin declarations not required on estimated CBPF 3461 clarifying total zone and dutiable value, weekly entry for zone-to-zone transfers, UIN and export package marking and multiple weekly entries.

- HMF for merchandise admitted into an FTZ is required to be paid quarterly on the CBPF 349. The Automated Commercial System (ACS) will be modified in the near future to reject the HMF (class code 501) when the HMF is submitted on an "06" FTZ consumption entry.

ADVANCED MANIFEST

Customs has posted to its website revised Frequently Asked Questions ([FAQs](#)) on the rail portion of its final rule on the advance electronic manifest requirements.

DOHA: FACT OR FICTION

WTO members announced agreement to continue negotiations towards trade liberalization. A closer look of the documents shows the most recent agreements omit key timeframes, definitions, and allow governments to circumvent reforms. The next scheduled [Doha](#) ministerial conference is Dec. 2005 in Hong Kong.

CONSIGNEE CHANGES

- A [Memorandum](#) has been issued by CBP changing the ultimate consignee policy. The policy changes and reporting [requirements](#) are effective Oct. 1, 2004. From Oct. 1, 2004, through October 31, 2004, CBP will exercise enforcement discretion.

U.S./EU TRADE

- The U.S. filed a [WTO complaint](#) against the EU charging that inconsistencies in EU customs laws hinder U.S. exports.
- The U.S. and the EU, in an effort to end what each side said were massive subsidies to flagship civil aircraft makers Boeing and Airbus, have launched the biggest [dispute](#) in the history of the WTO.

CBPF 7501

Customs has posted its [final draft](#) of the CBPF 7501 to its website. Some major changes are: the creation of a block for total entered value, a block for other fees, and a new block has been added for broker information. Comments are due to Bruce Coulliette via e-mail by October 22, 2004 at bruce.coulliette@dhs.gov.

IPR/COPYRIGHT PROTECTION

- The USTR has [announced](#) the launch of a new anti-counterfeiting initiative called the Strategic Targeting Organized Piracy (STOP!) program.
- Customs has issued a proposed rule to facilitate the process of recording and enforcing copyrights. Comments are due November 4, 2004. 69 Fed. Reg. [59562](#) (Oct. 5, 2004).

CHINESE TEXTILES

In advance of the January 1, 2005, phase-out of apparel and textiles quotas, U.S. apparel and textile manufacturers filed a petition on October 12th with the Commerce Department seeking limits on imports from China.

BTA PRIOR NOTICE

- Full enforcement of the BTA Prior Notice (PN) regulations has been [postponed](#) until November 1, 2004. [Guidance](#) in complying with the Requirements is available on FDA's website.
- The FDA recently issued an Administrative message regarding the increased number of Oasis rejects that have resulted since the FDA implemented additional edits in August. ADM [04-2171](#) (Oct. 7, 2004).

CUSTOMS BROKERS

Customs recently issued an Administrative message directing individuals without a corporate license, but with an individual license, and others without an individual license to cease and desist transacting Customs business. ADM [04-2167](#) (Oct. 6, 2004).

HTSUS CHANGES

On Sept. 8, 2004, the USITC began an investigation regarding the proposed modification to the Harmonized Tariff Schedule as a result of recommendations for the World Customs Organization or as circumstances warrant. The draft [preliminary report](#) should be carefully reviewed by clients. 69 Fed. Reg. [55461](#) (Sep. 14, 2004).

LIBYA SANCTIONS LIFTED

President Bush [issued](#) Executive Order [13357](#) on September 21, 2004 removing the remaining economic sanctions in place against Libya since 1986.

AGOA III INSTRUCTIONS

U.S. Customs and Border Protection (Customs) has issued [instructions](#) for how claims under the African Growth and Opportunity Act (AGOA) Acceleration Act of 2004 may be claimed.

TRANSFER PRICING

The Internal Revenue Service and Customs are engaged in a new effort supported by new software programs to identify discrepancies between values declared for Customs purposes and values declared for Internal Revenue Service tax purposes. Companies need to ensure that the values they declare for Customs purposes are supportable and consistent with values declared for Internal Revenue Service purposes.

TEXTILES IN FTZs

The quota system for textiles and apparel will terminate on December 31, 2004. Visa requirements for goods shipped prior to January 1, 2005 will be strictly enforced. Entry will be denied at any time after January 1, 2005 for any goods in a zone in excess of their 2004 quota levels.

SGFTA

Customs issued on September 16, 2004, a set of [amendments](#) to the January 30, 2004 instructions on filing/substantiating preferential tariff treatment under the U.S.-Singapore Free Trade Agreement (SGFTA). The verification process has changed.

ORIGIN LABELING

The United States Department of Agriculture's Agricultural Marketing Service (AMS) has issued an interim final rule to provide for a mandatory country of origin labeling program for farm-raised and wild fish and shellfish. This interim rule is effective April 5, 2005. 69 Fed. Reg. [59707](#) (Oct. 5, 2004).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 10/15/04		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	262	249
SUBZONES	550	462
PENDING		
ZONES	1	
SUBZONES	15	
MISCELLANEOUS	28	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	7	
SUBZONES	9	