

ATTORNEYS AT LAW

# BRIEFINGS

ROUTING SLIP

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## NAFTA CASE

The U.S. District Court for the Western District of Texas has rejected a Ford Motor Company motion to dismiss a Customs NAFTA record-keeping claim for \$42 million. Ford had refused to submit Customs-requested backup documentation for NAFTA certificates of origin issued by a wholly-owned Mexican subsidiary. This ruling permits Customs to continue its case against Ford. The case suggests one way that Customs will attempt to hold importers liable for NAFTA claims instead of directly proceeding against the issuers of NAFTA Certificates. However, the fact that Ford owned and controlled the vendor in question may be central to the case, so the real impact of the case remains to be seen. [U.S. v Ford Motor Co.](#), Case No. EP-06-CA-013-DB (Sept. 27, 2007).

## AUTOMATED TARGETING

The Department of Homeland Security has posted an unclassified [summary report](#) on the Automated Targeting System used by Customs to help select cargo containers for inspection. Recommendations include ensuring that shipments designated as high-risk are not released without examination, strengthening procedures to prevent containers from leaving without required inspections, developing procedures to extract ocean container exam results and using them to refine existing targeting rules, and enhancing control over high-security seals.

## 2007 SEMINAR SCHEDULE

- We have two Advanced Seminars remaining for 2007. The Advanced Seminars are:
  - **Oct. 23-24** - Classification
  - **Nov. 13-14** - Value
- One client-only, free seminar remains:
  - **Nov. 28-29**: 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](mailto:kgalate@millerco.com).

## IMPORT SAFETY

- In an unusual move, Mattel, the world's biggest toy maker, apologized to China, indicating that its own design flaw was the cause of a U.S. toy recall involving around 18 million playsets studded with potentially dangerous magnets. China has criticized the toy maker and other foreign buyers for placing too much blame on China for consumer safety recalls.
- Reflecting the public awareness of import safety issues, a number of import safety-related bills have been introduced in Congress. Some could have substantial impact, if ultimately passed. For example, on September 20 a bill ([H.R. 3610](#)) regarding safety of imported food was introduced in the House of Representatives that would impose a \$1,000 fee on imported pharmaceuticals and \$50 fee for imported food to defray the cost of Food and Drug Administration (FDA) inspections. The bill has been assigned to committee.

## ZONE ACCESS

In an unusual move, the Foreign-Trade Zones Board has requested comments by November 30 concerning uniformity of FTZ treatment, including possible conflicts of interest where third-party agents of Grantees may effectively control access to FTZ benefits in a particular community or region. 72 Fed. Reg. [53989](#) (Sept. 21, 2007).

## AFTZRP/e-214

- William Bostic, Jr., Chief, Census Foreign Trade Division announced at the NAFTAZ Annual Conference in Phoenix that the date for sunseting the Automated Foreign-Trade Zone Reporting Program ([AFTZRP](#)) has been extended to April 1, 2008.
- Customs has posted an updated [list](#) of ports that accept the e-214. However, a subsequent National Association of Foreign-Trade Zones (NAFTZ) poll found 17 ports accepting e-214s that are not on the Customs list.

## CBP TRADE SYMPOSIUM

Customs has [announced](#) that its annual trade symposium will occur November 14-15. It is speculated that Customs may issue its Proposed Rule for the "10+2" program at the symposium.

## FOOD SAFETY

The USTR has released a U.S. Food Safety and Trade [summary sheet](#) that clarifies FTA provisions regarding food safety.

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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### C-TPAT

- Customs has issued updated Customs-Trade Partnership Against Terrorism (C-TPAT) [Minimum Security Criteria](#) for foreign manufacturers in Mexico and Canada, and some other specially-invited foreign manufacturers.
- Customs has posted a [security notice](#) to remind C-TPAT members that sea carriers must visually inspect all U.S.-bound empty containers, including the interior of the container, at the foreign port of lading.

### CONTAINER SECURITY

Customs has [announced](#) that its FY 2007 Container Security Initiative goal has been reached by pre-screening maritime cargo containers destined for the U.S. ports at 58 overseas ports.

### e-MANIFEST: TRUCK

Beginning October 12, 2007, Customs will deny a permit to proceed into the U.S. for any truck required to submit an [e-Manifest](#) that arrives at all land border ports in New Hampshire, and Vermont, and the remaining land border ports in North Dakota.

### ACE UPDATES

- Customs has posted an updated [version](#) of the "ACE Workplan Schedule," providing a list of changes/fixes to ACE scheduled for deployment in October and November.
- An update to the CBPF 5106 (Importer ID Import Record) now requires the U.S. address to be an actual street, city, state, and zip code combination.
- Customs has posted a revised ACE application that includes the expanded account types that were delivered with the deployment of Entry Summary Accounts Revenue (ESAR) A1.

### INDIA VEU

The Bureau of Industry and Security has issued a Final Rule adding India to the Authorized Validated End User (VEU) regime for exports, reexports, and transfers. 72 Fed. Reg. [56010](#) (Oct. 2, 2007).

### TWIC

The Department of Homeland Security has [announced](#) that port workers, longshoremen, truckers, and others at the Port of Wilmington, Delaware will be the first to enroll in the Transportation Worker Identification Credential (TWIC) Program, which is designed to ensure that any individual with unescorted access to secure port areas and vessels has undergone a thorough background check. Enrollment will begin at eleven additional ports in November.

### FESTIVE ARTICLES

Since the holiday season is approaching, it is time for another "festive articles" dispute. The U.S. Court of Appeals for the Federal Circuit affirmed a CIT decision that some utilitarian articles (sweaters) are classifiable as festive articles in Heading 9505 of the Harmonized Tariff Schedule of the United States (HTSUS). [Michael Simon Design, Inc. v U.S.](#), CAFC Slip Op. [2007-1028](#) (Sept. 11, 2007).

### GSP

The U. S. International Trade Commission (USITC) has started an investigation into possible modifications to the Generalized System of Preferences (GSP) for 2007. A public hearing is scheduled for October 16, and the deadline for filing written submissions is October 24. 72 Fed. Reg. [53604](#) (Sept. 20, 2007).

### EXPORT ENFORCEMENT

Expanding on Department of Justice's (DOJ) earlier appointment of a National Export Control Coordinator, the DOJ has [announced](#) a new national initiative to combat illegal exports. The program involves coordination between the DOJ and various U.S. export enforcement agencies.

### OFAC – CIVIL PENALTIES

The Office of Foreign Assets Controls (OFAC) has posted a [summary](#) of civil penalties assessed in September 2007.

### MPF

U.S. Customs has issued a Final Rule amending its regulations to clarify that, in order to claim the MPF exemption under NAFTA, an importer must declare that its product is originating and qualifies to be marked as a product of Canada or Mexico under NAFTA, even if the merchandise is unconditionally free. 72 Fed. Reg. [52780](#) (Sept. 17, 2007).

### FREE TRADE AGREEMENTS

- U.S. Trade Representative Susan Schwab has indicated that the Bush Administration plans to send four pending FTA's to Congress in the order they were negotiated: Peru, Columbia, Panama, and Korea.
- On October 7 Costa Ricans [approved](#) a referendum supporting the FTA with the U.S. by a vote of 52% to 48%.
- House Ways and Means Chairman Charles Rangel (D-NY) and Senate Trade Subcommittee Chairman Sander Levin (D-MI) have raised several labor issues with the [U.S.-Panama FTA](#).
- The USITC has released its [report](#) on the impact of the US-Korea FTA, finding likely significant increases in Korean exports of textiles and vehicles to the U.S., but that much of the increases will diminish market share for other imports rather than displace U.S. products. Additionally, the report finds likely increases in U.S. meat and poultry exports to Korea.
- A Korean government minister has indicated that Korea will not renegotiate automotive provisions of the FTA, as certain members in Congress have requested.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 10/16/07		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	271	256
SUBZONES	599	497
PENDING		
ZONES	1	
SUBZONES	22	
MISCELLANEOUS	26	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	8	
SUBZONES	8	