

BRIEFINGS

LACEY ACT

The 2008 Farm Bill amendments to the Lacey Act requiring importers to declare the species of plants used to produce imported products are scheduled to go into effect December 15, 2008, with enforcement provisions phased-in beginning April 1, 2009. While the requirement potentially covers a broad array of products, a planned phase-in of implementations by HTSUS Chapter begins with Chapters 44 and 6, followed by 47, 48, 92, and 94, and inter-agency discussions are continuing. A guidance document clarifying issues such as exemptions for "common cultivars," the treatment of hang tags and instruction manuals, and de minimis material is under development. 73 Fed. Reg. [58925](#) (October 8, 2008).

"TRUSTED" SMUGGLERS

Issues involving individuals in preferential entry programs continue. Last month Customs [stopped](#) a FAST (Free and Secure Trade) program driver with 233 pounds of marijuana, a Mexican SENTRI (Secure Electronic Network for Travelers Rapid Inspection) [participant](#) with 167 pounds of marijuana, and "another" U.S. SENTRI [participant](#) citizen crossing the Mexican border with 137 pounds of marijuana. Customs actually used the word "another" in its press release. Expect these issues to have a direct negative impact on preferential entry programs.

2008 Seminar Schedule

- We have two remaining Advanced Seminars for 2008:
 - **Nov. 12-13** – Classification
 - **Dec. 9-10** – Exports
- More information is available on our web site. All seminars are on a first-come, first served basis. Register now by e-mail to Penny Freeman at pfreeman@millerco.com.

CONSUMER PRODUCTS

The Consumer Product Safety Improvement Act of 2008, which was just enacted on August 14, 2008 (Public Law [110-314](#)), is raising concerns because of a rushed implementation of a certification requirement on November 12 for "manufacturers" (including importers) of covered consumer products. At least initially, certificates need not be filed with entries, but may be requested by Customs or the Consumer Product Safety Commission. Failure to provide the required certification may result in refusal.

UNIFORM RULES OF ORIGIN

The deadline for commenting on Customs proposal to replace the "substantial transformation" standard with the rules in 19 C.F.R. Part 102 is October 23. Replacement of the "substantial transformation" standard will make origin determinations more difficult for many. Clients are encouraged to review their specific circumstances and file comments. Contact Sean Murray with questions. 73 Fed. Reg. [43385](#) (July 25, 2008).

ZONE MANAGEMENT

At the recent National Association of Foreign-Trade Zones (NAFTZ) Annual Conference in Florida, Andrew McGilvray, the Executive Secretary of the U.S. Foreign-Trade Zones Board, discussed changes to the proposed alternative site designation and management framework. Changes include flexibility on the five-year sunset provision, adding a transitional phase for Grantees that are reorganizing existing sites, eliminating the limit on the number of sites, and eliminating the requirement that a Grantee must choose one site as its primary "anchor" site. Comments are due October 31, 2008. 73 Fed. Reg. [52817](#) (Sept. 11, 2008). This option will likely be available to Grantee organizations in the next few months. Contact Marshall Miller or Scott Taylor with questions.

INTRA-COMPANY TRANSFERS

The Bureau of Industry and Security (BIS) has issued a proposed rule that provides a new [exception](#) to the export license requirements for intra-company transfers (ICTs), which will permit a parent company and its wholly-owned or controlled subsidiaries to export, reexport, or transfer many items currently on the Commerce Control List (CCL) that require export licenses. Prior authorization by BIS would be required. Comments on the proposal are due by November 17, 2008. 73 Fed. Reg. [57554](#) (October 3, 2008).

CHINA TEXTILE REVIEW

In advance of the expiration of the current U.S.-China Memorandum of Understanding (MOU) on textile and apparel on December 31, 2008, Chairman of House Ways and Means Committee Charles Rangel (D-NY) has sent an official request to the U.S. International Trade Commission (USITC) to collect textile and apparel statistics from China. Look for textile trade remedy proposals to appear early in 2009.

IPR

• LA – Long Beach Customs has announced an increase in seizures of counterfeit goods of 148% by value and 50% by number of shipments over the previous fiscal year. Customs attributes the record number of seizures to aggressive targeting of high risk shipments.

• The House and Senate have passed S. 3325, the "Prioritizing Resources and Organization for Intellectual Property Act of 2008." The bill extends copyright protection to exports, preventing export or transshipment of counterfeit goods, increases the statutory penalties and damages provisions of current federal law, and harmonizes forfeiture laws with regard to IPR violations.

• U.S. officials met with EU and other foreign government officials on October 8-9 in Tokyo to continue discussions on the proposed Anti-Counterfeiting Trade Agreement (ACTA). The goal is to combat global intellectual property rights infringements, particularly counterfeiting and piracy, by increasing international cooperation and strengthening IPR enforcement measures.

FTZ e-HMF PAYMENTS

The CBPF 349 may currently be completed on-line with the HMF due automatically calculated, but completed forms cannot be transmitted to Customs on-line and must be printed and mailed. Expect electronic submission and payment to be authorized in the future.

FIRST SALE DECLARATIONS

Customs received numerous inquiries based on the interim rule [published](#) on August 25, 2008, and has [published](#) a guidance document on the First Sale declaration requirement imposed in the 2008 Farm Bill.

MANDATORY AES

Filing electronically via the Automated Export System (AES) became mandatory on October 1, 2008. Any exporters that submit paper Shipper's Export Declarations (SEDs) are subject to penalties. Customs sources have stated that the informed compliance period for Census is extended until Customs issues penalty mitigation guidelines later this month or early November.

HTSUS ONLINE TOOL

The U.S. International Trade Commission (ITC) has announced the development of a new HTSUS Online Reference Tool. The goal is to provide user-friendly access to the HTSUS by early 2009. The tool is to be a single source of HTSUS information, including searches using synonyms or preferred terms and the ability to click on specific HTSUS items and access classification rulings on CROSS.

ACE REPORTS TOOL

Customs has posted an Automated Commercial Environment (ACE) "Topic" document on summary ACE reports for all trade users except truck carriers. Each section provides instructions on how to run, filter, sort, save, schedule, create charts and graphs, and print reports.

HOPE ACT

Customs has issued a final rule, effective September 30, 2008, incorporating the duty free provisions of the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Acts of 2006 and 2008. The 2008 HOPE Act expands preferential access for textile and apparel articles. 73 Fed. Reg. [56715](#) (Sept. 25, 2008).

TEXTILES-FTZ

The Foreign-Trade Zones Board has reopened the public comment period for three applications by upholstered furniture manufacturers that involve imported textile products. The new public comment period ends November 14, 2008. 73 Fed. Reg. [61019](#) (October 15, 2008).

DDTC COMPANY VISITS

The Directorate of Defense Trade Controls (DDTC) has posted a series of [frequently asked questions \(FAQ\)](#) regarding its company visit program, under which teams of DDTC officials visit ITAR-registered companies to identify issues.

BIS CLASSIFICATIONS

The Bureau of Industry and Security (BIS) will allow companies to make their commodity classification information available through the BIS website, creating a link from the BIS website to each company's website where the information will be posted. Clients are warned that such information will take people to their websites and is only a reference for determining classifications. They must still be carefully verified. Contact CommodityClassification@bis.doc.gov if interested in linking your classifications. Contact Mark Teerink with questions.

BIS IRAN GUIDANCE

BIS has issued [guidance](#) on how exporters can prevent unknowingly assisting in the illicit diversion of items on the CCL and EAR99.

| FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 10/15/08 | | |
|--|----------|----------------------|
| | APPROVED | CURRENTLY AUTHORIZED |
| ZONES | 272 | 255 |
| SUBZONES | 621 | 518 |
| PENDING | | |
| ZONES | | 1 |
| SUBZONES | | 24 |
| MISCELLANEOUS | | 28 |
| AVERAGE PROCESSING TIME (MONTHS) | | |
| ZONES | | 8 |
| SUBZONES | | 10 |