

BRIEFINGS

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CUSTOMS OVERSIGHT

- The Department of Homeland Security (DHS) Office of Inspector General (OIG) released a [report](#) on Customs oversight of the Importer Self-Assessment (ISA) Program, finding that Customs had not established key management controls or effective oversight.
- Customs received this report on August 30 and on September 16 released an updated [ISA Handbook](#) that adds detailed instructions for preparation of the Annual Notification Letter (ANL), and detailed guidance on implementing a self-testing plan that meets Customs expectations.
- The DHS [FY 2011 Annual Performance Plan](#) for OIG includes audits on the penalty process, the Regulatory Audit audit process, FTA textile provisions, bond amounts, C-TPAT member security practices verification, FAST eligibility processes, and the Permit to Transfer (PTT) program.

VOLUNTARY DISCLOSURES

John Sonderman, Assistant Director of the Bureau of Industry and Security (BIS) Office of Export Enforcement, recently indicated that 86% of the voluntary self-disclosures submitted last fiscal year resulted in either a Warning Letter or a No Violation Letter.

TRANSFER PRICING

Customs is planning to publish a Notice revoking a number of related party/transfer pricing rulings. Customs is silent as to when this will occur and what it will cover, but it indicates that Customs is refocusing on value issues. Contact Tom Lobred with questions.

WINTER SEMINARS

We have four remaining seminars scheduled for 2010:

- Nov. 9, 2010 - Import/Export 101
- Nov. 10, 2010 - Import/Export 201 (including Incoterms 2010)
- Dec. 7, 2010 - FTZ 101
- Dec. 8, 2010 - FTZ 201

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

CHINA

- The House of Representatives passed [H.R. 2378](#) on September 29 which would allow Commerce to consider undervalued currency as a countervailable subsidy in trade remedy cases. The Senate could consider the bill in a post-election "lame duck" session.
- The Commerce Department reported that the trade deficit with China reached a new single month record in August, at \$28 billion.
- In response to a Petition filed by the United Steelworkers Union, on October 15 the USTR initiated a Section 301 investigation into China's policies affecting trade and investment in green technologies such as wind and solar energy products, batteries, and fuel-efficient vehicles.

FTZ PENALTIES

San Juan Customs has [issued](#) a warning to FTZ users that they will issue penalties to companies operating outside of their approved FTZ Board Scope of Authority. Contact Marshall Miller or Scott Taylor with questions about conducting a Scope of Authority analysis to ensure compliance.

ELECTRONIC INVOICES

Customs has made Automated Broker Interface (ABI) system modifications to display a new electronic invoice indicator. Ports have been instructed that they are permitted to pursue liquidated damages or penalties based on the filer's failure to timely submit documents and/or electronic invoices for entry summaries submitted after November 15, 2010. CSMS [#10-000226](#) (Sept. 25, 2010); [#10-000243](#) (Oct. 14, 2010).

CUSTOMS INQUIRIES

A Customs Account Manager sent an unofficial email to importers indicating the new ACE update and compliance measurement guidelines will generate more entry summary reviews and CF28 Requests for Information, particularly to confirm invoice descriptions and declared values. After the email was forwarded to other importers, another Customs official attempted to retract the comments, saying it contained incorrect and internal Customs information. Regardless, importers should anticipate increased inquiries related to invoicing and value. We have seen company electronic invoicing programs create problems in recent years due to short or incomplete data field descriptions.

FIRST SALE UPDATE

Customs has formally withdrawn its proposed revocation of the "first sale rule." The result is that an importer may continue to use the first sale in a series of sales for appraisement, qualified under the [Nissho Iwai](#) requirements. 75 Fed. Reg. [60134](#) (Sept. 29, 2010).

C-TPAT UPDATES

- Customs has issued a [press release](#) announcing membership in the Customs-Trade Partnership Against Terrorism (C-TPAT) has grown to over 10,000 with almost half the membership being small or midsized companies. 50% of all U.S. imports are through C-TPAT partnership importers.
- Customs has posted the "[2010 Partner Survey](#)" of C-TPAT program members. 42% of businesses responded that the benefits of participation outweighed the cost, which was up 10% from a 2007 survey.

e-214s

Customs has issued a revised CSMS making it clear that FTZ filers have the option of submitting concurrences for their e-214s either at the container, in-bond, bill of lading, or admission level. CSMS [#10-000236](#) (Oct. 7, 2010).

FILING DEADLINES

Showing the importance of filing deadlines and providing a possible avenue for duty recovery, the Court of Appeals for the Federal Circuit has affirmed a CIT ruling that retaliatory duties imposed in response to the EU ban on U.S. hormone-treated beef automatically terminated in July 2007 because the U.S. Trade Representative failed to request comments and domestic industry failed to request continued retaliation. [Gilda Industries Inc. v. U.S.](#), CAFC Slip Op 09-1492 (Oct. 13, 2010).

DRUG SAFETY

The House Energy and Commerce Committee has released a discussion draft of [H.R. 759](#). Among other provisions, the bill would impose importer and customs broker registration requirements, export certification, and a requirement that the website of the manufacturer of finished dosage form drugs list their Active Pharmaceutical Ingredient (API) country of origin and place of manufacture.

REDELIVERY NOTICES

The Court of International Trade (CIT) has confirmed that when Customs requests samples within 30 days of merchandise release, Customs may not legally demand redelivery more than 30 days after the samples are received by Customs or assess liquidated damages for the failure to redeliver. [Pressman-Gutman Co. Inc. v. U.S. CIT Slip Op. 10-105](#) (Sept. 16, 2010).

GLOVE TARIFFS

The U.S. Supreme Court has refused to hear a glove importer's appeal that different duty rates for men's and women's gloves were unconstitutional under the Equal Protection Clause.

BEARINGS

The Port of Los Angeles has issued a Public Bulletin reminding importers of their additional invoice and entry obligations when filing bearing entries. The Public Bulletin includes a spreadsheet that can be completed and attached to the invoice at the time of entry. [LA 10-012](#) (Oct. 1, 2010).

NEW WASSENAAR CHANGES

The BIS has made changes to the Commodity Control List (CCL), effective October 13, to correct errors in the September 7 update to the CCL. 75 Fed. Reg. [62675](#) (Oct. 13, 2010).

AD NON-REIMBURSEMENT

In [All Tools, Inc. v. U.S.](#), the CIT threw out as untimely filed protests challenging doubled antidumping duties for failing to submit non-reimbursement certificates. CIT [Slip Op. 10-114](#) (Oct. 5, 2010).

AGOA COMMENTS

The U.S. Trade Representative (USTR) is conducting its annual review of countries eligible for benefits under African Growth and Opportunity Act. Comments are due by October 21, 2010. 75 Fed. Reg. [61239](#) (Oct. 4, 2010).

MANDATORY RETIREMENT

The Office of Personnel Management (OPM) has proposed regulations that would mandate retirement of CBP Officers at 57 years of age. Incumbent Customs Officers will not be subject to the mandatory retirement age, but will be eligible for partial annuity computation. 75 Fed. Reg. [60643](#) (Oct. 1, 2010).

EXCISE TAXES

In [Shah Brothers v. U.S.](#), the Court of International Trade (CIT) ruled that Customs, not the Alcohol and Tobacco Tax and Trade Bureau (TTB), possesses the authority to assess TTB excise taxes and to classify tobacco products. [CIT Slip Op. 10-115](#) (Oct. 6, 2010).

CHEMICAL IMPORTS

Houston Customs has issued a Public Information Notice (PIN), restating the additional information required for imports of chemical products classified in HTS Chapters 27 through 29. As indicated in the PIN, Customs has renewed its demand for the information and could reject incomplete or inadequate entries. [HOU-10-18](#) (Sept. 13, 2010).

BIS REQUEST FOR COMMENT

The Bureau of Industry and Security (BIS) has requested comments regarding small and medium sized businesses' understanding of the U.S. export control laws and the types of related challenges. Comments are due by December 6. 75 Fed. Reg. [61706](#) (Oct. 6, 2010).

| FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 10/15/10 | | |
|--|----------|----------------------|
| | APPROVED | CURRENTLY AUTHORIZED |
| ZONES | 274 | 257 |
| SUBZONES | 662 | 517 |
| PENDING | | |
| ZONES | 1 | |
| SUBZONES | 26 | |
| MISCELLANEOUS | 35 | |
| 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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4929 MAIN STREET
KANSAS CITY, MO 64112
816.561.4999
FAX 816.561.5999
E-MAIL intllaw@millerco.com

1875 I STREET N.W., 5TH FLOOR
WASHINGTON, D.C. 20006

233 BROADWAY, SUITE 2702
NEW YORK, NEW YORK 10279