

BRIEFINGS

C-TPAT/SECURITY

• Customs has issued proposed minimum [security standards](#) for importers interested in participating in C-TPAT. Customs' new proposal, if implemented as written, would provide minimum requirements not voluntary recommendations. The firm's C-TPAT program already incorporates most of Customs standards. Contact Marshall Miller for details or access our web site.

• Customs has issued a set of draft security standards for ocean carriers participating in C-TPAT. Copies of the draft standards will be posted to our web site when available.

• The Transportation Security Administration (TSA) has issued a proposed rule concerning air cargo security requirements. The proposed rule primarily requires the adoption of security measures by air freight forwarders, airport operators, aircraft operators, and foreign air carriers. Further, the proposed rule will codify the TSA's "Known Shipper" Program. Expect time delays and increased expense. Comments are due January 10, 2005. 69 Fed. Reg. [65257](#) (Nov. 10, 2004).

MADE IN U.S.A. MARKING

A second California court decision, [Colgan v. Leatherman](#) was recently published. It continues the unfortunate circumstances of the application of the California statutes on this subject matter. Clients continuing to use "Made in U.S.A." marking should seriously consider the previous [Kwikset](#) decision and now the [Leatherman](#) decision.

MARSHALL MILLER

His Majesty Emperor Akihito of Japan has [announced](#) the conferment of the decoration, "The Order Of the Sacred Treasure, Gold Rays with Neck Ribbon," upon Marshall V. Miller. The decoration will be given to Mr. Miller for his significant contributions towards deepening friendship and understanding between the people of Japan and the U.S. Mr. Miller is only one of two worldwide to receive this particular decoration in 2004.

PROTOTYPES

Customs has issued a final rule effective Dec. 2, 2004, amending 19 C.F.R. in order to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA), also known as the "Prototype Provision." Clients should carefully consider the recordkeeping requirements that are similar to TIBs; current TIBs can be transferred to the new provision. 69 Fed. Reg. [63445](#) (Nov. 2, 2004).

FDA PRIOR NOTICE PHASE 5

Full enforcement (Phase 5) of the the Food and Drug Administration's (FDA) prior notification (PN) requirements went into effect on November 8. Customs has updated its Interim Processing [Instructions](#) for PN to include enforcement guidelines for Phase 5. Failure to provide PN will result in refusal of the shipment and/or penalty assessment.

HOMEOPATHIC PRODUCTS

Customs has proposed two rulings (HQ 967075 and HQ 967363) that would change the Harmonized Tariff Schedule of the United States classification of certain homeopathic products from HTSUS 2106.90.9998 (6.4% duty) to HTSUS 3004.90.9190 (duty-free) as dosage-form medicaments. This is in sharp contrast to years of rulings precluding classification of homeopathic products in HTSUS 3004.90.9190. Comments are due November 26, 2004. 38 Cust. B. & Dec. [44](#) (Oct. 27, 2004).

ISA UPDATES

Customs has updated several key documents relating to its Importer Self-Assessment (ISA) program. Among the revised documents are the ISA Handbook; the MOU to participate in ISA; the ISA Questionnaire and the ISA annual notification letter. These and other Importer Self-Assessment related documents can be found on the Customs [web site](#). We continue to believe that the primary illusory "benefit" of avoiding an audit does not outweigh the very substantial requirements, including an annual compliance certification.

FTZ MANUFACTURING

The Foreign Trade Zones Board (FTZB) has [implemented](#) its expedited manufacturing approval procedure for all companies in existing general-purpose zones and subzones. Manufacturing authority can be secured for up to 2 years within 75 days of official filing.

DEEMED EXPORTS

The BIS has issued two Final Rules in the *Federal Register* concerning deemed exports of certain computer and microprocessor technology, and source code under the Export Administration Regulations (EAR). 69 F.R. [64483](#) and [64490](#) (Nov. 5, 2004).

NAFTA RULES OF ORIGIN

U.S., Mexican, and Canadian officials met in Ottawa on Oct. 18th and 19th to review NAFTA rules of origin. Products being reviewed include chemicals, pharmaceuticals, motor vehicles and parts, footwear, and copper. The next meeting is scheduled for November in Mexico. There is still time for clients to work on Rules of Origin changes. Any changes are scheduled to be implemented Jan. 1, 2005.

AES FATAL ERRORS

In one more sign of increased Customs attention to exports, Customs in Los Angeles has published a Public Bulletin reminding the exporting community that fatal error messages generated as a result of faulty AES input must be corrected either prior to the exportation of the merchandise, or prior to the 10th day after exportation under Option 4.

CHINA SAFEGUARDS

- CITA has published a [notice](#) announcing that it has requested bilateral textile consultations with the government of China to establish an import limit for cotton, wool, and manmade fiber socks in categories 332/432 and 632.
- CITA has announced that it is requesting two sets of public comments concerning certain apparel. Comments must be received on Categories 347/348 no later than Dec. 3, 2004; and on Categories 638/639, 338/339, 340/640, 352/652, and 647/648 no later than Dec. 9, 2004. [69 Fed. Reg. 64034](#) (Nov. 3, 2004); [69 Fed. Reg. 64911- 64915](#) (Nov. 9, 2004).

CONTAINER SECURITY

A COAC Subcommittee has outlined its [recommendations](#) to secure international transportation. Final recommendations include procedures for container security and seals. Clients should review carefully and begin implementing these standards.

TRADE BARRIERS

The Department of Commerce's Trade Compliance Center (TCC) has requested detailed information from U.S. companies that have experienced trade barriers abroad when selling or investing overseas – e.g., detailed testing, labeling and certification requirements, excessive regulations or fees, and tariffs. Clients are encouraged to participate. Further information may be obtained from www.export.gov/tcc.

DHS

DHS is currently planning to re-introduce a regional structure system. DHS officials held a meeting on Nov. 5 to discuss the regional concept, answer industry questions, and provide an update, but will seek to coordinate among all of the resources available within the region.

FOOD IMPORTS

Agriculture, one of the few big sectors of the economy that produces trade surpluses, has recently generated monthly deficits. The U.S. is still the world's biggest agricultural exporter, but the agricultural trade surplus is evaporating so quickly that the sector might generate an annual trade deficit as soon as the fiscal year ending Sept. 2005.

MERCOSUR-CAN FTA

Members of South America's two large trading blocks, Mercosur and the Andean Community of Nations (CAN), concluded an Agreement that would eliminate tariffs between the member countries within a 15-year timetable, pending ratification by the individual nations.

H.S. EXPLANATORY NOTES

The World Customs Organization (WCO) issued an [amending supplement](#), No. 5 dated February 2004, to the Harmonized System Explanatory Notes (ENs). Amendments were made to the ENs for H.S. chapters 25, 26, 29, 34, 39, 40, 44, and 71, covering a variety of headings. Clients should always use EN's as part of their comprehensive Customs classification process.

EAR DEADLINE EXTENDED

The BIS is expected to extend the comment period until December 13, 2004, for its 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. [69 Fed. Reg. 60829](#) (Oct. 13, 2004).

CHINA-ASEAN FTA

China has reached tentative agreement with members of the Association of Southeast Asian Nations (ASEAN) to create the "China-Asian FTZ Goods Trade Agreement." ASEAN includes Brunei, Cambodia, Laos, Indonesia, the Philippines, Malaysia, Burma (Myanmar), Singapore, Thailand, and Vietnam. Many details must be resolved. If finally approved, the Agreement would eliminate tariffs on most merchandise by 2010.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 11/15/04		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	262	249
SUBZONES	551	463
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PENDING		
ZONES	1	
SUBZONES	16	
MISCELLANEOUS	31	
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AVERAGE PROCESSING TIME (MONTHS)		
ZONES	7	
SUBZONES	9	