

ATTORNEYS AT LAW

# BRIEFINGS

ROUTING SLIP

---

---

---

## C-TPAT

• New Customs-Trade Partnership Against Terrorism (C-TPAT) statistics were provided at the recent Customs Trade Symposium in Washington on Nov. 3<sup>rd</sup>. There are 10,079 certified C-TPAT participants; 1,106 validations have occurred; and 2,484 validations are in process. While not mentioned at the Conference, the validation reject rate continues to be approximately 20%.

• Michael Jackson, Deputy Director of the Department of Homeland Security, spoke on his vision of a Global Trade Depository that would in essence require purchase order to warehouse receipt verification for all merchandise shipments globally. It is "ACE on steroids." Do not expect prompt action.

## BIS ANNUAL UPDATE 2005

The Bureau of Industry and Security's (BIS) Update 2005 Conference on Export Controls and Policy was held in Washington on October 24-25. The [conference](#) focused on enforcement, including the use of Census' pending Foreign Trade Regulations as an audit and enforcement tool. Exporters should expect to see an export audit and penalty system more like that on the import/Customs side. Government officials also emphasized increased attention to deemed exports/transfers of technology and employment of foreign nationals, and stricter export documentation/reporting enforcement.

## FIRM SEMINAR

The firm will be presenting a "how to" client training seminar on the new FTZ e-214 on December 6th. Contact Sarah Rogers ASAP for reservations at [srogers@millerco.com](mailto:srogers@millerco.com).

## MANDATORY AES DELAY

Reports are circulating that the Commerce Department will further delay publishing the final rule on mandatory Automated Export System (AES) filing—to the first quarter of 2006—meaning that the rule will not go into effect until mid-2006.

## MONTHLY STATEMENTS

Importers wishing to participate in Periodic Monthly Statements (PMS), but not wishing to formally join ACE, may now do so. The PMS process allows importers to receive one monthly statement and transmit payments for duties and fees once per month for all imports. C-TPAT certified Importers are automatically eligible to participate in PMS; but all other importers must have their Customs broker submit a CBPF 5106 to be eligible. *70 Fed. Reg. 61466* (October 24, 2005). See also ADM 05-1233 (October 25, 2005).

## US/CANADA CSI INITIATIVE

U.S. and Canadian Customs have entered into a Container Security Initiative (CSI) [partnership](#) to coordinate border security efforts.

## ELECTRONIC CBPF-214

The initial rollout of the [electronic FTZ CBPF-214](#) ("e-214") is approaching. The e-214 program will initially be implemented at [specified ports](#), with new ports added as CBP personnel are trained in the procedures. The test begins November 19th.

## EXPORT ACTIONS

• BIS has [announced](#) \$5,500 fines against two men who misrepresented foreign-origin goods as U.S.-origin, causing U.S. exporters to file erroneous Shipper's Export Declarations. This highlights the need to perform origin diligence on all third-party sourced goods.

• Maine Biological Laboratories has been [fined](#) \$500,000 and 8 of its former managers have been sentenced to prison and/or probation for numerous violations, including smuggling avian flu virus, exporting avian flu vaccine to Saudi Arabia, knowingly mislabeling vaccines for export, and exporting inactivated Newcastle Disease vaccines to Syria without required licenses.

## ENFORCEMENT

As reported in the *Journal of Commerce*, Robert Allen, CBP Regulatory Audit Field Director, has stated that commercial enforcement efforts are being increased. Penalties will be sought, not just lost revenue. Customs audits have returned to pre-9/11 levels. Recent client experiences have reflected this trend.

### DOHA TALKS STALL

High-level World Trade Organization talks in London have failed to produce an interim agreement, and hopes are fading for major progress at the Hong Kong Ministerial scheduled for next month due to significant discord between developing and industrialized nations over a broad range of issues, particularly industrial tariffs and agricultural matters.

### IMPORT TAX REFORM

Retailers are mounting a [campaign](#) against a recommendation from President Bush's Advisory Panel on Federal Tax Reform to change the current tax deduction for the cost of imports as an expense. The Panel's proposal would offset this change with an overall tax rate decrease.

### BROKER EXAM

Customs has posted the October 2005 broker exam [questions and answers](#) on its website. The pass rate was only 4%, which is dramatically low.

### CHINA IP

The United States has [initiated a process](#) under World Trade Organization rules to obtain information on China's intellectual property rights enforcement efforts. Japan and Switzerland have joined the United States by filing similar requests.

### ORIGIN

Mandatory country-of-origin labeling for meats and fresh produce has been delayed until September 30, 2008 by Public Law 109-97, as reflected in the House-Senate Conference Report [109-255](#).

### ON-LINE FORMS

CBP has [updated](#) its on-line forms, which now include CBPF 7501 (Entry Summary), CBPF 214 (FTZ Admission), and CBPF 823F (FAST Driver Application).

### COTTON DISPUTE

Brazil has formally requested authority to impose more than \$1 billion in retaliatory measures against the U.S. for its failure to eliminate a cotton subsidy program found to violate World Trade Organization rules. Significantly, Brazil's request includes not only tariff rate increases, but also a request to suspend service and intellectual property obligations. Such measures are becoming more common as countries see them as more effective and less harmful (to themselves) than the more common practice of retaliatory tariffs.

### CHINA TEXTILE SAFEGUARDS

The USTR has [announced](#) that significant progress has been made in discussions with China on a comprehensive textile agreement for 2006-2008. Meanwhile, CITA has been generally delaying decisions on requests for safeguard quotas.

### ACE UPDATES

- Customs has announced the next group of Michigan ports and dates for testing the Automated Commercial Environment (ACE) National Customs Automation Program (NCAP). 70 Fed. Reg. [60096](#) (Oct. 14, 2005).
- CBP has [posted](#) new or modified Electronic Data Interchange (EDI) messages for ACE releases. Updates to CBP manifest, status information, and acceptance/rejection are included in this release.

### MCP AGREEMENT

The USTR has [announced](#) the completion of an agreement with the EU, Japan, Korea, and Taiwan that will make multi-chip integrated circuits or multi-chip packages (MCP's) duty free between the countries. U.S. headquartered companies account for approximately 50% of global MCP production valued at \$4 billion dollars in 2004.

### DHS APPROPRIATIONS ACT

On October 18, 2005, President Bush signed into law [Public Law 109-90](#), the Department of Homeland Security Appropriations Act. Key appropriations include \$320 million for the development of the Automated Commercial Environment (ACE); funding for 1,000 additional border patrol agents; \$138 million for the Container Security Initiative (CSI); \$54 million for C-TPAT; \$28 million for Automated Targeting Systems; and \$16.7 million for the National Targeting Center.

### BYRD AMENDMENT

[Legislation](#) to repeal the "Byrd Amendment" was passed October 26th by the House Ways and Means Committee. Significant Senate opposition continues.

### FTA – OMAN

- President Bush [notified](#) Congress of his intent to sign the Oman Free Trade Agreement (FTA) on October 17, 2005, starting a 90-day waiting period before signature can occur. The target implementation date is January 1, 2007. Upon implementation, the FTA will make 100% of bilateral trade in industrial and consumer products and nearly 90% of U.S. agricultural exports to Oman duty-free.
- A public hearing on the effects of the FTA is scheduled for December 7, 2005. Written submissions are due on December 15, 2005. 70 Fed. Reg. [67500](#) (Nov. 7, 2005).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 11/15/05		
	<u>APPROVED</u>	<u>CURRENTLY AUTHORIZED</u>
ZONES	260	247
SUBZONES	534	453
<u>PENDING</u>		
ZONES	3	
SUBZONES	13	
MISCELLANEOUS	28	
<u>AVERAGE PROCESSING TIME (MONTHS)</u>		
ZONES	8	
SUBZONES	8	