

ROUTING SLIP

BRIEFINGS

2008-2009 Seminars

• We have one remaining Advanced Seminar for 2008:

- Dec. 9-10 – Exports

More information is available on our web site. Register now by e-mail to Penny Freeman at pfreeman@millerco.com.

• We are currently planning our 2009 seminar schedule. Dates will be announced in future Briefings and posted on our website.

CUSTOMS SYMPOSIUM

The primary focus of the Customs Commissioner's Symposium on Oct. 29-31, 2008, was to be the final 10+2 regulation, but the timing of final action on 10+2 is now unclear. Copies of the presentations are [available](#) on the Customs website.

• Customs announced an aggressive [CBP Trade Strategy](#) for 2009 – 2013 that includes enhanced compliance validation.

• Other topics included a Customs-Consumer Product Safety Commission partnership, continued C-TPAT development, and further delays in ACE implementation.

AES FAQs

In answers to Frequently Asked Questions ([FAQs](#)), Customs has clearly asserted its role in reviewing Automated Export System (AES), transmissions issues, including enforcement activity, filing timeframes, discrepancies, and penalties.

10 + 2 UPDATE

• The Office of Management and Budget (OMB) completed its [review](#) of Customs "10+2" rule on November 6. The rule must now survive a Congressional review period before it can be published, and on Oct. 27 the House Ways and Means Committee sent a [letter](#) to Secretary Chertoff of the Department of Homeland Security and Customs Commissioner Basham urging, instead of immediate Final Rule implementation, issuance of an interim "10 + 2" Importer Security Filing (ISF) rule with phased-in enforcement to allow Customs to evaluate the rule in practice with volunteer importers.

• Commissioner Basham has warned that successful lobbying against the 10+2 rule may lead to "100% scanning of every container." Commissioner Basham re-asserted his support for targeting high risk trade corridors instead of 100% scanning.

NEW RULES OF ORIGIN

Customs has extended to December 1 the comment period for its proposed change of the origin standard to the tariff shift-based rules of origin in 19 C.F.R. Part 102. 73 Fed. Reg. [64575](#) (Oct. 30, 2008). Even if the results of the origin determination are intended to be the same, this proposal has a potentially substantial impact on client compliance efforts. Contact Sean Murray with questions or for assistance with comments.

ANNOUNCEMENTS

• Scott S. Taylor, former Associate, has become a Partner in the firm.

• David Jackson recently joined the firm as an Associate. David recently passed the Missouri Bar Examination, and previously passed the Customs brokers exam.

• The firm welcomes Michael O'Neill, Senior Legal Assistant, and Rod Baum, Legal Assistant, to the Kansas City office. Michael was a former founder and principal in O'Neill and Whitaker, a nationwide customs brokerage, and Rod worked on export licensing and other issues for a law firm in Washington D.C.

CPSIA FINAL RULE

• The Consumer Product Safety Commission (CPSC) has posted a Final Rule to help clarify the requirements of the CPS Improvement Act of 2008 (CPSIA). The rule will take effect upon publication in the Federal Register and:

• Limits the General Conformity Certificate requirement to the importer for imports and the manufacturer for U.S.-manufactured products.

• Clarifies when and how certificates must be presented.

• Lists other Acts enforced by the CPSC that are subject to certification.

• The firm has prepared a general memorandum on CPSIA import requirements. Contact Sean Murray with questions.

LACEY ACT UPDATE

The Animal and Plant Health Inspection Service (APHIS) has [posted](#) updated material concerning Lacey Act declaration requirements. Public comments on the implementing regulations are due December 8. The Administration and members of Congress have also expressed a desire to review the scope of the requirements. 73 Fed. Reg. [58925](#) (Oct. 8, 2008).

GE ORGANISMS

APHIS has issued a Proposed Rule to update the procedures for importing genetically-engineered plants and organisms. 73 Fed. Reg. [60008](#) (Oct. 9, 2008).

FDA DRUG INSPECTIONS

The Government Accountability Office (GAO) has [published](#) a report critical of the FDA foreign drug safety inspection program. Perhaps not coincidentally, the FDA has [announced](#) that it will be opening offices in China, India, Europe, Latin America, and the Middle East to work with local authorities and industries.

ISA PRODUCT SAFETY PILOT

Customs has announced a voluntary Importer Self-Assessment-Product Safety (ISA-PS) pilot program that is open to all ISA participants. Volunteers will be selected to participate by Customs and the Consumer Product Safety Commission (CPSC). Benefits are to include a CPSC point of contact, reductions in product safety tests, priority CPSC testing, and special recall treatment. 73 Fed. Reg. [64356](#) (Oct. 29, 2008).

CUSTOMS BROKER EXAM

Customs has [posted](#) the October 2008 broker's exam and answer key to its web site. The pass rate was 10.1%, down from 20.5% in April 2008.

POSTDEPARTURE FILINGS

Census has issued new [guidance](#) for post-departure ("Option 4") export filers.

FOOD PRIOR NOTICE

The FDA has issued a 118 page Final Rule that formalizes the prior notice requirement for imported food into specific regulations. The FDA has also concurrently published a Draft Compliance Guide on complying with the new regulations. 73 Fed. Reg. [66294](#) (Nov. 7, 2008)(Final Rule); 73 Fed. Reg. [66411](#) (Nov. 7, 2008)(Compliance Guide).

HTSUS & EQUAL RIGHTS

The Court of International Trade has rejected a gender discrimination claim, and holding that the HTSUS distinction between "men's" gloves and "other" gloves is not facially discriminatory. The court held open the possibility for Totes to refile its complaint to provide more substantive proof of discrimination. [Totes-Isotoner Corp. v. U.S.](#), Slip Op. [08-119](#) (Nov. 4, 2008).

LABELS FOR REFUSED FOOD

The Food and Drug Administration (FDA) has proposed a rule requiring a label for foreign foods that are refused entry. Comments are due by December 2, 2008. 73 Fed. Reg. [54106](#) (Sept. 18, 2008).

NEW PENALTIES RULING

The Court of Appeals for the Federal Circuit (CAFC) has issued a decision precluding the inclusion of prejudgment interest in Customs penalties issued under 19 U.S.C. § 1592(c)(4), the Prior Disclosure statute. While so ruling, the CAFC also affirmed the broad discretion of the courts and Customs to assess penalties to the maximum allowed by law. [Nat'l. Semiconductor Corp. v. U.S.](#), CAFC Slip Op. [2008-1195](#) (Nov. 13, 2008).

EXPORT ENFORCEMENT 2008

The Department of Justice has [announced](#) that the National Export Enforcement Initiative resulted in criminal charges against more than 145 persons in FY 2008 and that more than 500 agents and prosecutors received focused training.

CCL REVISIONS

The Bureau of Industry and Security (BIS) has issued several rules that affect numerous ECCNs in Categories 1, 2, 3, 5 (Parts I and II), 6, 7, and 9, as well as definitions and the treatment of encryption items and *de minimis* U.S.-origin content under the EAR. Clients are urged to review their export control classifications to see if the revisions affect their exports. 73 Fed. Reg. [60910](#) (Oct. 14, 2008); 73 Fed. Reg. [58033](#) (Oct. 6, 2008); 73 Fed. Reg. [57495](#) (Oct. 3, 2008); 73 Fed. Reg. [56964](#) (Oct. 1, 2008).

BIS AES ENFORCEMENT

At a recent advisory committee meeting, the director of the Bureau of Industry and Security's (BIS) Office of Export Enforcement (OEE) said OEE enforcement of Census Foreign Trade Regulations (FTR) and Automated Export System (AES) rules will be secondary to other priorities, and OEE will focus only on egregious violations. This is contrary to previous BIS and Census indications that FTR/AES enforcement will be a high priority.

GSP/ATPA/ATPDEA

President Bush signed [H.R. 7222](#) into law on October 16, 2008, extending the Generalized System of Preferences (GSP) through December 31, 2009 and the Andean Trade Preferences Act/Andean Trade Promotion and Drug Eradication Act (ATPA/ATPDEA) through December 31, 2009 for Colombia and Peru and through June 30, 2009 for Ecuador and Bolivia.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 11/15/08		
ZONES SUBZONES	APPROVED	CURRENTLY AUTHORIZED
	272 622	254 519
ZONES SUBZONES MISCELLANEOUS	PENDING	
	1	
	26 27	
ZONES SUBZONES	AVERAGE PROCESSING TIME (MONTHS)	
	8 10	