

BRIEFINGS

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FTZ BOARD REGS

• We continue to assess the impact of the proposed new FTZ Board Regulations. The proposed regulations provide a new framework for expediting export only manufacturing, expediting production authority, securing interim production authority pending final approval, and establishing a new, after the fact, production change notification procedure. There are significant new regulations covering Grantee management and conflict of interest. Extensive new fines and penalties provisions cover Annual Reports, Grantee oversight, and FTZ operations. While the conceptual framework is generally positive, the Proposed Rule will require extensive revisions. As General Counsel for the NAFTAZ, the firm will be directly engaged in all aspects of the revisions to the regulations. Comments are due April 8, 2011. Please contact Marshall Miller or Scott Taylor with questions.

• The Board has [scheduled](#) additional forums for Newark, Detroit, Houston, Atlanta, and Miami.

MADE IN USA

A California Supreme Court opinion emphasizes the need for correct origin markings. In [Kwikset v. Benson](#), the court ruled that an individual purchaser had standing to bring suit under California's Unfair Competition Law for inaccurate "Made in USA" markings. Some other states have similar origin provisions in consumer protection laws. Contact Sean Murray with questions. Slip Op. [S171845](#) (Jan. 27, 2011).

2011 TRAINING SEMINARS

Details on the firm's 2011 seminar schedule are on our [website](#). The spring sessions include:

- April 5, 2011 - FTZ 101
- April 6, 2011 - FTZ 201
- May 3, 2011 - Import/Export 101
- May 4, 2011 - Import/Export 201 (including Incoterms 2010)

The 101 seminars are no charge to clients. More information is available on our website. Register by email to [Penny Freeman](#).

FTR CHANGES

Census has announced very significant proposed changes to the Foreign Trade Regulations (FTR) in two separate Federal Register Notices. Changes include limiting ("Option 4") post-shipment filings, changes in Automated Export System (AES) exemptions including in-bond and temporary exports, requiring the listing of the specific country of origin and end user, requiring a new AES filing on some split shipments, and a change in the definition of Foreign Principal Party in Interest (FPPI). Comments are due March 22 on the general changes to the FTR; and March 25 on changes specific to the AES. 76 Fed. Reg. [4002](#) (Jan. 21, 2011) (FTR); 76 Fed. Reg. [4091](#) (Jan. 24, 2011)(AES).

EXPORT HTSUS

[Census](#) and [Customs](#) have posted updated lists of the HTSUS numbers that cannot be used with Electronic Export Information (EEI) filings in the Automated Export System (AES).

TRADE POLICY

• In the recent State of the Union Address, President Obama requested Congressional approval on the Korea FTA when it is formally submitted to Congress and encouraged collaboration on completing the Colombia and Panama FTAs. Republicans are pressing the Administration to complete the FTAs.

• The President announced a new program for increased regulatory efficiency and review of existing regulations. Goals include increased transparency, harmonization, simplification, cost-effectiveness, and the sharing of compliance and enforcement information across agencies. Some agencies have already requested public input. 76 Fed. Reg. [3821](#) (Jan. 21, 2011); 76 Fed. Reg. [3825](#) (Jan. 21, 2011); 76 Fed. Reg. [3827](#) (Jan. 21, 2011).

• The White House has [announced](#) a reorganization of U.S. agencies involved in trade and exports to boost U.S. competitiveness. This includes the Commerce Department, the Office of the U.S. Trade Representative (USTR), the USDA Foreign Agricultural Service, the Export-Import Bank, State Department, Office of Foreign Asset Controls (OFAC), and the U.S. Trade and Development Agency.

IMPORT TRADE TRENDS

Customs has issued its [Import Trade Trends Report](#) for Fiscal Year 2010, which indicates Customs processed almost \$2 trillion worth of imports. This is still less than the peak 2008 level. Imports were 13% higher than 2009 and duties collected were up 9.5%.

C-TPAT

Effective March 10, 2011, the Land Border Carrier Initiative Program (LBCIP), a voluntary anti-smuggling program for land and rail commercial carriers, will be terminated in favor of C-TPAT. 76 Fed. Reg. [6688](#) (Feb. 8, 2011).

INCOTERMS 2010

The International Chamber of Commerce (ICC) has written a letter to the World Customs Organization, reminding that use of Incoterms 2010 is voluntary and should not be considered a requirement to enter products into a country. The ICC has indicated that Customs authorities in Argentina, Japan, and Turkey were mistakenly requiring use of the new Incoterms. Contact Sean Murray with questions.

ATPA/ATPDEA/TAA AND GSP

Negotiations remain stalled in Congress on extending the Andean Trade Preferences Act (ATPA), Andean Trade Promotion and Drug Eradication Act (ATPDEA), Trade Adjustment Assistance (TAA), and the Generalized System of Preferences program (GSP). Customs has issued guidance for ATPA/ATPDEA claims since the programs expired on February 12. CSMS [#11-000051](#) (Feb. 11, 2011).

CLOUD COMPUTING

The BIS has issued an [advisory opinion](#) on "cloud computing." It warns that information a company loads and makes available could be a deemed export, and therefore subject to the EAR.

GOV'T PROCUREMENT

Customs has issued numerous rulings on origin for government procurement purposes. The Court of International Trade (CIT) has ruled for the first time in [Xerox Corporation v. U.S.](#) that it possesses jurisdiction to hear challenges to these origin determinations. Xerox challenged a ruling on the origin of toner cartridges. CIT Slip Op. [11-8](#) (Jan. 24, 2011).

AIR IN-BOND

Customs has stated that ABI air in-bond functionality has been re-deployed for certification. Once Customs determines it is working as designed, a CSMS message will be issued on the date of the deployment, which could be as soon as 30 days from deployment for certification. CSMS [#11-000026](#), (Jan. 26, 2011).

SNAP-R CHANGES

The BIS has issued a Final Rule, effective March 11, that will require that all BIS export licenses and similar documents be submitted electronically via the Simplified Network Application Processing – Redesign (SNAP-R). New registration and administrator requirements are also included. 76 Fed. Reg. [7102](#) (Feb. 9, 2011).

PAPERLESS BONDS

The Customs Revenue Division has posted details of the pilot program for a [Paperless Bonds Process](#), recommending that new continuous bond applications, termination requests, bond riders, and rejections be submitted electronically as email attachments utilizing TIF formats.

FDA ENTRIES & FILINGS

Los Angeles Customs has issued a message directing filers of Food & Drug Administration (FDA) entries to transmit data separately by product, even when classified in the same HTSUS provision. CSMS [#11000030](#) (Jan. 28, 2011).

BIS ANNUAL REPORT

According to its [2010 Annual Report](#) to Congress, the Bureau of Industry and Security (BIS) collected \$25.4 million in administrative fines in 2010, up from \$14.5 million in 2009. There were a total of 53 cases, down one from the previous year. Anti-boycott violations accounted for 14 of the cases, up from 3 in 2009. Criminal cases resulted in an additional \$12.3 million in penalties, \$2 million in forfeitures, and a total of 522 months of prison time.

OFAC FAQs

- The OFAC recently added a set of Frequently Asked Questions ([FAQs](#)) on blocked or rejected packages. OFAC explains its position that not only can the sender be held liable for an illegal export, but also the carrier. Clients should be aware that this will encourage carrier inquiries and carrier self-reporting of potential violations.
- OFAC has issued [guidance](#) and FAQs regarding the use of aliases by Specially Designated Nationals (SDNs). Companies with good compliance programs may avoid an OFAC penalty if they accidentally engage a SDN using an alias.

PROF ROTH'S APPEAL

Continuing a well-known export enforcement case, on January 5, the Sixth Circuit U.S. Court of Appeals upheld retired University of Tennessee professor John Roth's 4 year imprisonment for allowing Chinese and Iranian national students to work with defense trade technical data and sharing defense related technical data while in China. [U.S. v. Roth](#), 6th Cir. Slip Op. [09-5805](#) (Jan. 5, 2011).

SECTION 321 ENTRIES

Section 321 entries raise compliance concerns for many importers, but are still used. Chicago Customs has issued a new Pipeline on Section 321 releases. A cover sheet or un-numbered CBPF 3461 must be submitted at the time of entry, along with the bill of lading. Chicago Pipeline [11-03](#) (Feb. 14, 2011).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 2/15/11		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	275	258
SUBZONES	670	526
PENDING		
ZONES	2	
SUBZONES	21	
MISCELLANEOUS	28	
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