

# BRIEFINGS

VOLUME 23 NO. 2

April 15, 2011

## FTZ BOARD REGS

The Foreign-Trade Zone Board's Proposed Rule on its regulations represents the most significant proposed changes in the history of the program. Comments are due May 26. It is critical that all clients involved in the FTZ program understand the proposed regs and file comments. As General Counsel of the NAFTAZ, the firm has worked closely with 4 Task Forces to identify issues and develop alternatives. We are preparing detailed guidance for our clients to explain the NAFTAZ position and how the proposed changes impact all FTZ participants -- Grantees, Operators and Users. Contact Marshall Miller at any time for a detailed explanation of the circumstances or for assistance with comments.

## TREASURY REG REVIEW

The Department of the Treasury has requested public comments for consideration in its regulatory efficiency review pursuant to President Obama's Executive Order 13563. Since Treasury jurisdiction includes the Office of Foreign Assets Control (OFAC), the "Specially Designated Nationals" listings, and some Customs activities, this is an opportunity to provide comments on a wide range of trade issues. Comments are due April 29. 76 Fed. Reg. [17572](#) (March 30, 2011).

## FTA - COLOMBIA

The U.S. and Colombia have reached agreement on an [Action Plan](#) on labor rights for Colombia workers, which will clear the way for discussions with Congress on FTA implementation.

## 2011 TRAINING SEMINARS

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

- 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](#).

## JAPAN

- The release of radiation from the Fukushima Daiichi nuclear power plants has raised concerns about U.S. imports from Japan. A Customs [fact sheet](#) describes radiation screening procedures for marine and air cargo, and aircraft passengers. The FDA has issued an Import Alert FDA ([IA # 99-33](#)) on radiation safety of imports from Japan and a set of frequently asked questions ([FAQs](#)), both of which have recently been updated.
- The Bureau of Industry and Security (BIS) has indicated that it will expedite any license application for Japanese relief efforts, if requested.
- The Census Department has issued a [broadcast](#) reminding that there are special Schedule B numbers for sending charity or relief supplies.

## 2011 HTS UPDATE

Customs has issued an automatic system update on the 2011 HTS that affects 1,094 ABI records and 190 Harmonized Tariff records. CSMS [#11-000072](#) (March 24, 2011).

## FDA UPDATES

- In April 13 testimony, Food and Drug Administration (FDA) Commissioner Margaret Hamburg requested more statutory authority to regulate imports, and stated that the FDA intends to roll out its Predictive Risk-Based Evaluation for Dynamic Import Compliance Targeting (PREDICT) system in Florida and Puerto Rico this month. PREDICT is currently in use in Los Angeles, New York, Seattle, and San Francisco.
- The FDA has issued specific [recommendations](#) on expediting entries by using the correct Affirmation of Compliance Codes, Product Codes, and firm identifiers for imported medical devices and electronic products, parts, and components. Customs has issued a message noting the impact of these recommendations on entries. CSMS [#11-000084](#) (April 14, 2011).
- The FDA has posted information regarding the March 29 public meeting on [import safety provisions](#) of the Food Safety Modernization Act (FSMA).
- The FDA has also issued an [update](#) outlining its approach to FSMA implementation, which includes import provisions in the initial efforts. An Interim Final Rule is being drafted.

## BROKER PILOT HALTED

Customs has issued a [report](#) on the year-old Broker Self-Assessment Outreach Pilot, calling for an end to the program. Brokers indicated that they were limited in their ability to ensure compliant entries, and Customs found that the entry compliance rate did not correlate with a broker's internal controls.

## C-TPAT

- At the latest Trade Symposium, Customs Commissioner Bersin explained his desire to dramatically increase C-TPAT membership by adding benefits and is soliciting ideas from the trade. The U.S. Council for International Business (USCIB) has proposed 18 potential benefits, including penalty mitigation, reduced bond limits and the release of containers not subject to exams.
- Senators Collins (R-ME) and Murray (D-WA) have introduced the SAFE Port Reauthorization Act of 2011 (S. [3659](#)) to reauthorize C-TPAT, the Container Security Initiative (CSI) and Automated Targeting System. It includes authorization for Customs to conduct unannounced security inspections.
- Customs has signed an [agreement](#) on C-TPAT with New Zealand that is the first to bestow Tier 2 status on members of a partner country's secure supply chain program.

## ANTIDUMPING EVASION

A federal jury has issued a ten (10) count [indictment](#) to a Chinese national and his company for making false Customs entries in order to evade antidumping duties on imported plastic bags. The plastic bags carry a 77.57% antidumping duty rate. The indictment seeks forfeiture of a minimum of \$1.15 million in evaded duty, and the defendants face prison sentences for conspiracy, smuggling, making false customs entries, and false classification of goods.

## LIBYAN SANCTIONS

OFAC has [issued sanctions](#) on a number of Libyan entities in the last few weeks. Libyan officials who support Libyan rebels have had their names removed from the sanctions list. Many Libyan banks are sanctioned because they are owned or controlled by Gaddafi or the Libyan government, complicating payments to non-sanctioned Libyans.

## CUSTOMS FTZ OVERSIGHT

A March 2011 Department of Homeland Security Office of Inspector General (OIG) [report](#) identifies weaknesses in Customs internal controls in the oversight of foreign-trade zones, including the failure to document the assessed risk of each FTZ and the results of scheduled compliance reviews. The OIG report findings will likely lead to increased FTZ compliance reviews. Contact Marshall Miller with questions.

## CLASSIFICATION CASE

In [Storewall, LLC, v. U.S.](#), the Court of Appeals for the Federal Circuit (CAFC) decided that wall panels and tabs were duty-free "unit furniture" notwithstanding Explanatory Notes (ENs) language excluding wall fixtures like racks. The CAFC decided the ENs clarified, and did not impermissibly contradict, the scope of an unambiguous tariff term. CAFC Slip Op. [2010-1193](#) (March 31, 2011).

## CUSTOMS IPR UPDATES

- Customs has issued an Intellectual Property Rights (IPR) Enforcement Guide entitled "[How Businesses Can Partner with CBP to Protect their Rights](#)," delineating patent and copyright recordation procedures and providing links and contact information.
- The new Customs IPR Internal Search (IPRiS) database allows Customs officers to authenticate imported goods by viewing [confidential product identification guides](#) uploaded by rights owners.
- Customs has issued the [IPR FY2010 Seizure Statistics – Final Report](#), which indicates a 34% increase in seizures.

## FASTENERS

Customs has posted a 2011 version of the [Informed Compliance](#) Publication on "Distinguishing Bolts from Screws." No changes were made, so the difficult application of multiple criteria is still required to classify bolts and screws. Contact Bill Williams with questions.

## SNAP-R

The [BIS](#) is requiring that all users of the Simplified Network Application Processing-Redesign (SNAP-R), the on-line licensing system, assign an administrator by June 9. After that date, entities who have not assigned an administrator will have their SNAP-R user identifications inactivated.

## PRODUCT CODES

The International Trade Data System (ITDS) 2010 [Annual Report](#) discusses the standardization of product identification and classification codes. A pilot test involving toys has been completed and the Consumer Product Safety Commission is evaluating the results. Other tests are underway.

## SINGLE WINDOWS

- The 2010 ITDS [Annual Report](#) indicates that Customs and other agencies have made significant progress toward implementation of a "single window" for reporting imports and exports and that the agencies should have examined the potential for enhancing the Automated Export System (AES) by summer.
- The President's Export Council (PEC) [recommended](#) at its March 11 meeting that the various export stakeholders work together to develop a "single window" to help streamline the export process.

## DOJ EXPORT CASES

The Department of Justice has published [a summary](#) of embargo and export-related cases over the past four years.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 4/15/11		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	275	258
SUBZONES	674	530
PENDING		
ZONES	2	
SUBZONES	22	
MISCELLANEOUS	30	
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.  
© 2011 Miller & Company P.C.

4929 MAIN STREET  
KANSAS CITY, MO 64112  
816.561.4999  
FAX 816.561.5999  
E-MAIL [intllaw@millerco.com](mailto:intllaw@millerco.com)

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

233 BROADWAY, SUITE 2702  
NEW YORK, NEW YORK 10279