

# BRIEFINGS

## TRANSFER PRICING

According to press reports, expect Customs to tighten enforcement of related party transfer pricing rules. This murky area will definitely become more contentious.

## USTR

Comments are due by noon on April 19, 1999, on trade practices that should be considered by the USTR for identification as priority foreign country practices and discriminatory government procurement practices. [64 Fed. Reg. 17053 \(Apr. 7, 1999\)](#)

## TRADE COMPLIANCE REPORT

Customs submitted to Congress its annual Trade Compliance Measurement Report. The report contains compliance measurements and summary tables on specific imports. Compliance rates are well below expectations. <http://www.customs.ustreas.gov/mp-exp2/pubform/tcmr/1998/index.htm>

## CIVIL ACTIONS

According to press reports, Customs is expected to issue in April, sizable civil penalties against several large companies for violations involving misclassification, undervaluation, etc. The view is that these companies have failed to exercise reasonable care after Customs has worked with them for years through informed compliance. This will be the beginning of a tougher Customs position nationwide.

## DUE DILIGENCE

Clients are reminded that in purchasing another firm, potential Customs issues should be reviewed. This is an area many times overlooked. It can be a very expensive mistake.

## HTS SIMPLIFICATION

Comments are due June 30, 1999, on the ITC's draft of a simplified Harmonized Tariff Schedule (HTS). The new draft is only 6½" high. Clients are urged to carefully review affected HTS lines as many are combined/changed. <http://www.usitc.gov/sec/10326w2m.htm>

## FTZ WEEKLY ENTRY

Customs withdrew the proposed amendments to the Customs Regulations that would have expanded the weekly entry for foreign-trade zones to include warehousing/distribution operations. The sole reason was a potential loss in merchandise processing fee (MPF) revenue. The withdrawal was effective March 17, 1999. All pilot program participants are allowed to continue as negotiations with the NAFTAZ are ongoing. The proposed solution would require a daily MPF calculation. A new Headquarters port survey is underway. [64 Fed. Reg. 13142 \(Mar. 17, 1999\)](#)

## RECORDKEEPING PENALTIES

Customs has issued new proposed guidelines covering the mitigation of recordkeeping penalties. Comments are due June 1, 1999. 33 Cust. B. & Dec. 20 (Mar. 31, 1999).

## HMT

- Clients who have not yet joined the FTZ litigation are urged to do so. Plaintiff's Response to Defendant's Cross-Motion for Partial Summary Judgement was recently filed at the CIT and is being forwarded to all clients.
- The HMT refund procedure has resulted in the receipt of 3,350 refund claims by Customs and the payment of 93 judgments totaling \$66 million. [www.customs.ustreas.gov/fed-reg/notices/uscourt.htm](http://www.customs.ustreas.gov/fed-reg/notices/uscourt.htm)
- Competing proposals exist to replace the Harbor Maintenance Tax. No quick resolution is expected.

## NAFTA

On or after June 30, 1999, NAFTA-originating products of Mexican origin entered or withdrawn from warehouse consumption are exempt from the MPF. [CEBB T-MPF4.TXT \(Apr. 12, 1999\)](#)

## WTO

The third Ministerial Conference of the World Trade Organization (WTO) will be held in Seattle, Washington, November 30 - December 3. The Interagency Trade Policy Staff Committee (TPSC) is seeking public comments on the development of the agenda, scope, content, and timetable for negotiations. Public hearings will be held in Washington, Chicago, Atlanta, Los Angeles, and Dallas in May and June. Oral testimony notification is due May 5. Written comments are due May 26. [64 Fed. Reg. 18469 \(Apr. 14, 1999\)](#)

## 1592 CASE

The Court of Appeals for the Federal Circuit (CAFC) has rendered a significant decision on Section 1592 penalties. In [U.S. v. Hitachi America](#), the CAFC, upheld a CIT decision finding Hitachi America (HA) liable for negligent Section 1592 violations, but rejected the government's contention that Hitachi acted fraudulently or with gross negligence. The case is significant because of rulings that: (1) HA was negligent under Section 1481 for failing to declare the price in the currency of payment and under 1485 for falsely swearing on entry documents that it did not know that the declared price was inaccurate; (2) a waiver of the statute of limitations can apply to entries on which the statute has already run; and (3) Hitachi, Ltd., the Japanese parent company could not be held liable for aiding and abetting a negligent act. CAFC Slip Ops. 97-1431,1447, 1452 (Mar. 25, 1999)

## LLPVMQ

Customs posted a notice to its Electronic Bulletin Board expanding its Physical Verification of the Manifested Quantities (PVMQ) program to a lower level. The LLPVMQ physically verifies the actual contents of containers and accuracy of the bill-of-lading. Customs will completely examine approximately 1000 randomly selected containers from 262 vessels at approximately 30 ports. [CEBB T-LLPVMQ.TXT \(Mar. 29, 1999\)](#)

## FDA EXPORTS

FDA issued a proposed rule which would more fully specify the statutory requirements regarding notification and recordkeeping requirements for persons exporting human and animal drugs, biologics, devices, food and cosmetics that cannot be marketed or sold in the U.S. generally. Written comments are due June 16, 1999. [64 Red. Reg. 15944 \(Apr. 2, 1999\)](#)

## DRAWBACK

Drawback participants with Accelerated Payment or Waiver of Notice privileges who have not filed renewal applications, should file a reinstatement application. Privileges granted under the old Drawback regulations were valid for only one year after April 6, 1998. The new regulations provide a one-time retrospective application for Waiver of Notice of intent to export or destroy goods. Contact Lee Shultz.

## CUSTOMS PAYMENT

Customs issued a Proposed rule to expand payment of duties, taxes, fees, interest, etc. by credit or charge cards to any electronic technology or charge cards (debit or credit) that are authorized by the Commissioner of Customs and to remove the limitation that these methods may only be used by non-commercial entities. Comments are due May 17, 1999. [64 Fed. Reg. 13141 \(Mar. 17, 1999\)](#)

## BONDED WAREHOUSES

A proposed amendment to the Customs Regulations regarding the filing of certain inventory reports by bonded warehouse proprietors has been issued. Comments are due June 7, 1999. [64 Fed. Reg. 16868 \(Apr. 7, 1999\)](#)

## COUNTERFEIT MARKS

Customs issued a notice setting forth proposed guidelines for the assessment and mitigation of civil fines for the importation of merchandise for sale or public distribution that has been seized because it bears a counterfeit mark. Comments are due May 10, 1999. 33 Cust. B. & Dec. 10 (Mar. 10, 1999).

## EXPORTING USED VEHICLES

Customs T.D. 99-34, effective May 6, 1999, amends Part 192 of the Customs Regulations regarding the exportation of used self-propelled vehicles. There are extensive documentation requirements. [64 Fed. Reg. 16635 \(Apr. 6, 1999\)](#)

## BANANA/BEEF WAR

- A WTO arbitration panel ruled the EU's banana regime has damaged the U.S. economy by \$191 million.
- The USTR released its final list of European products that will be hit with a 100% tariff. <http://www.ustr.gov/releases/1999/04/99-35.html>
- The USTR issued a draft list of EU products that could be subject to 100% import duties in retaliation for the EU's continuing ban on imports of U.S. beef produced with growth-promoting hormones. [64 Fed. Reg. 14486 \(Mar. 25, 1999\)](#)

## 1999 USTR TRADE POLICY

USTR released the 1999 *Trade Policy Agenda* and the 1998 *Annual Report of the President of the United States on the Trade Agreements Program*. These documents contain the Clinton Administration's trade policy priorities for 1999 and review of its 1998 accomplishments. <http://www.ustr.gov/reports/tpa/1999/index.html>

## BONDED PIPELINE/TANKS

Customs T.D. 99-33, effective April 5, 1999, implemented certain statutory changes regarding recordkeeping for merchandise transported by pipeline and duty-free withdrawals from Customs bonded warehouses if aircraft turbine fuel. It also clarified the procedures applicable to aircraft turbine fuel withdrawn for duty-free use and then commingled with other lots of fuel before being so used. [64 Fed. Reg. 16345 \(Apr. 5, 1999\)](#)

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 4/15/99		
	APPROVED	PENDING
ZONES	229	6
SUBZONES	405	26
MISCELLANEOUS		26
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	14	
SUBZONES	11	