

# BRIEFINGS

ROUTING SLIP

## EXPORT REVIEW/UPGRADE

Clients are urged to take time this summer to focus on upgrading export compliance. It is only a matter of months before Census will require all export documentation to be transmitted electronically through AES. Increased seizures and questions concerning export shipments abound. The new Census Regulations also provide an array of significant enforcement and penalty mechanisms that. Now is the time to order new or updated Census data in order to identify issues with past submissions and to structure a thorough export compliance program. Contact Marshall Miller or Sean Murray for details.

## EXPORT VIOLATIONS

- BIS has updated its [publication](#) "Don't Let This Happen to You!" which is an introduction to U.S. export control law and provides summary details of export control and antiboycott violations. Clients are encouraged to provide copies to senior management to encourage increased funding/staffing for compliance efforts.
- Since April 15<sup>th</sup>, BIS has issued press [releases](#) on six export enforcement cases, with penalties of \$1.13 million and multiple criminal indictments.

## CUSTOMS BROKER EXAM

Customs has posted its April 2005 Broker's [exam and answer key](#) to its web site. The unconfirmed pass rate was 5.8%, down from 9% in October 2004.

## FIRM FTZ SEMINAR

The firm still has limited space available to the June 21-22 no charge client seminar at our Kansas City office. Contact Sarah Rogers ASAP at [srogers@millerco.com](mailto:srogers@millerco.com) for reservations. More detailed information is available on our web site.

## C-TPAT ACTION PLAN

The firm has a C-TPAT Action Plan to assist clients in joining C-TPAT or meeting the new required criteria. Details are provided on our [web site](#).

## FTZ SELF-MONITORING

The Foreign-Trade Zones Board (FTZB) has added a self-monitoring provision to its [Guidelines for Foreign-Trade Subzone Applications](#). The provision would require subzone operators to notify the FTZB and submit an Expansion Application if new production activity identified in the Application, but not initially utilized, results in a financial savings greater than 10% of the initial financial savings cited in the original Subzone Application. We are in continuing discussions with the Board regarding this new provision.

## FTZ AUTOMATION

One by-product of automation of the zone admissions process by September 2005 will be the ability for the Foreign-Trade Zones Board and Customs to closely monitor receipts into foreign-trade zones. We urge clients to review the FTZ Scope of Authority now.

## C-TPAT

- As of this past April, Customs had validated 549 C-TPAT certified companies; 173 of these were importers. Almost 100 companies were decertified and suspended from the program for negative validations, failing to meet their C-TPAT commitments, or because their supply chain security was compromised. This equates to nearly 20% of the certified companies failing their validation and losing their C-TPAT certification. Removal from C-TPAT causes an immediate increase in exams and removal from ISA and FAST.
- On April 21, Commissioner Bonner formally announced tiered benefits for C-TPAT partners. The first tier would consist of certified C-TPAT companies receiving reduced examinations. The second tier would consist of validated C-TPAT companies that receive even fewer exams. The third tier would consist of C-TPAT companies that have been certified, validated, and have adopted C-TPAT "best practices" receiving no security-related inspections and only being subjected to relatively infrequent random inspections. All C-TPAT companies that have been validated will be given priority when their shipments are selected for inspection.

## CUSTOMS ANNUAL REPORT

Customs has posted its Performance and Annual [Report](#) for FY 2004 to its web site. The Report provides statistics and summaries of Customs activities.

## MANDATORY AES FILING

There were 43 [comments](#) submitted on the proposed Census Foreign Trade Regulations, which include mandatory AES usage. Census hopes to issue a Final Rule by September, with an implementation date of January 1, 2006. Census has already stated that, based on the comments received, portions of the proposed regulations will require "rethinking." Since multiple government agencies are involved, expect more delays.

## CIT JURISDICTION

Legislation is being prepared that would expand the jurisdiction of the CIT to include U.S. export control issues, such as classification, licensing, and penalties. This would be a significant expansion of the Court's jurisdiction. It is reported that Congressional sponsors for the bill are currently being identified.

## GSP REVIEW

The Office of the U.S. Trade Representative (USTR) has issued a notice and request for comments by June 15, 2005 concerning its annual review of products eligible for duty-free treatment under the Generalized System of Preferences (GSP). 70 Fed. Reg. [24460](#) (May 9, 2005).

## ACE

Customs has [posted](#) to its website the presentation on ACE that was given during the recent C-TPAT Seminar. It lists the number of ACE accounts, provides information on future ACE releases, and details the benefits that companies should receive as a result of joining ACE.

## ACS PROTESTS

ACS protest system changes required by the Miscellaneous Trade and Technical Corrections Act of 2004 (P.L. 108-429) have been completed and are effective in ACS and ABI as of May 2. ADM [05-0477](#) (May 2, 2005).

## BIS

BIS has issued a Final Rule increasing the country scope of chemical and biological (CB) controls for ECCNs that contain CB equipment and related technology included on the Australia Group list. 70 Fed. Reg. [19688](#) (April 14, 2005).

BIS has issued a Final Rule that makes several changes to the EAR. Specifically, it revises certain contact information, including the address to which voluntary self-disclosures are to be sent; updates some organizational names; and corrects a citation error in §762.1(a)(4). 70 Fed. Reg. [22247](#) (April 29, 2005).

BIS is organizing an effort to publicize the benefits of its voluntarily self-disclosure provisions and to dispel the impression that companies who voluntarily self-disclose export control violations have been subject to large fines compared to those companies who do not self-disclose.

## CONTAINER SEALS

Customs has drafted regulations to require the use of high-security mechanical seals on maritime inbound containers, and completed its regulatory impact analysis. The rulemaking is currently undergoing DHS review. Expect a Proposed Rule in the *Federal Register* soon.

## VESSEL ENTRY DENIED

The Coast Guard has issued a notice of policy that denies entry to vessels that call on ports in 5 countries (Democratic Republic of the Congo; Guinea-Bissau; Liberia; Mauritania; and Nauru) because they do not have effective anti-terrorism measures in place. The policy is effective May 23, 2005. 70 Fed. Reg. [22668](#) (May 2, 2005).

## BROKER CODES

Customs has [posted](#) a list of brokers for each U.S. port of entry on its web site. The list is periodically updated.

## CHINA SAFEGUARDS

On April 27 the Court of Appeals for the Federal Circuit (CAFC) lifted the Court of International Trade's (CIT) preliminary injunction.

The EU has initiated an [investigation](#) to determine whether market disruption has occurred and whether the EU should impose special safeguard measures.

On May 13, CITA [announced](#) safeguard quotas on China origin cotton shirts, trousers, and underwear by the end of May. More cases are pending. Consultations with China to avoid these actions will occur.

On May 14, China announced its opposition to any U.S. quota imposition and indicated it would seek WTO support.

## D-TRADE UPDATE

The State Department's Directorate of Defense Trade Controls (DDTC) has issued [guidance](#) on the new version of the electronic export license application form (DSP-5) that must be used as of May 2, 2005.

## BTA PRIOR NOTICE

The Food and Drug Administration has issued a revised, April 2005 edition of its guide to prior notice filing requirements for imported food under the Bioterrorism Act (BTA). The [guide](#) is now called the "Prior Notice Summary Information."

## INFORMED COMPLIANCE

Customs has posted recently revised [Informed Compliance Publications](#) (ICPs) to its web site.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 5/15/05		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	262	249
SUBZONES	561	492
PENDING		
ZONES	5	
SUBZONES	16	
MISCELLANEOUS	32	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	7	
SUBZONES	10	