

BRIEFINGS

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FTZ BOARD REGULATIONS

- Clients are strongly encouraged to submit comments on the proposed changes to the Foreign-Trade Zones (FTZ) Board Regulations before the May 26 deadline. The firm has prepared a detailed [analysis](#) of the proposed FTZ Board changes and a [redlined version](#) of the National Association of Foreign-Trade Zones proposal. Please contact Scott Taylor for assistance.

- The FTZ Board held a webinar on May 11, 2011 to discuss the possible [next steps](#) after the public comment period closes on May 26. The options include: (1) revising and re-publishing the proposed regulations; (2) publishing interim regulations that would take effect immediately; or (3) publishing final regulations for non-controversial sections, closely followed by "further revised" proposed regulations for all other sections.

FTZ KITTING OPS

In [Dell Products LP v. U.S.](#), the Court of Appeals for the Federal Circuit (CAFC) affirmed the lower court decision that a secondary battery (3.4%) entered into U.S. commerce by Dell from a foreign-trade zone packaged with a computer, primary battery, cords, and manuals cannot be classified together with the computer (0%) as a set. The batteries were added to the computer in a foreign-trade zone – a common FTZ duty savings strategy. FTZ Operators with kitting operations should review existing operations to confirm compliance with this case. CAFC Slip Op. [2010-1451](#) (April 29, 2011). Contact Marshall Miller with questions.

ITAR PROPOSED CHANGES

- The Directorate of Defense Trade Controls (DDTC) introduced a new definition of "specially designed" at the Defense Trade Advisory Group (DTAG) on May 3. DDTC indicated that this new definition will exclude many commercially available items from regulation under the International Traffic in Arms Regulations (ITAR). This new definition should appear very soon in a Federal Register Notice of Proposed Rulemaking.

- The DDTC has proposed a rule to allow U.S. dual use products that contain a U.S. Munitions List item to be exported to certain U.S. allies. This rule would effectively eliminate the ITAR "see-through rule" in certain situations, but would only apply if the ITAR controlled component was less than 1% of the finished product value. Spares would still require an ITAR export license. 76 Fed. Reg. [13928](#) (March 15, 2011).

RESIDUES

Customs has updated its Frequently Asked Questions ([FAQ](#)) document on residues imported in Instruments of International Traffic (IITs). The update delays enforcement indefinitely, pending resolution of computer issues. Customs previously scheduled enforcement to begin on July 17, 2011.

VALUATION ENCYCLOPEDIA

Customs has updated its Customs Valuation Encyclopedia for the first time since January 2004. The updated [Encyclopedia](#) includes citations to over 150 recent rulings. Contact Tom Lobred with questions.

AD/CVD BOND ELIMINATION

- The International Trade Administration (ITA) has issued a proposal to eliminate all antidumping and countervailing (AD/CVD) bonds. A cash deposit would be required. This would have a significant impact on importers of AD/CVD products. Presently, no other World Trade Organization (WTO) members allow the use of bonds for this purpose. Comments must be received by May 26. 76 Fed. Reg. [23225](#) (April 26, 2011).

- On May 5, Customs [testified](#) before a Senate Finance subcommittee on AD/CVD duty evasion and enforcement. Senators plan to introduce legislation to strengthen AD/CVD enforcement. Customs discussed the use of information sharing, "Jump Teams," Single Transaction Bonds, ID circumvention, and some additional tools.

I.T. PRODUCTS

The U.S. Trade Representative (USTR) has requested comments on whether the United States should negotiate to expand the coverage and scope of the Information Technology Agreement (ITA). The ITA, covering 73 countries, extends duty-free treatment to computers, semiconductors, and other IT products. Comments are due by June 13. 76 Fed. Reg. [26334](#) (May 6, 2011).

CUSTOMS BROKER EXAM

Customs has posted its April 2011 Broker's [exam](#) and [answer key](#) to its web site. The pass rate was 19%, down significantly from October 2010's pass rate of 29%.

BONDS

Customs has posted a [notice](#) on its web site of a change in policy on the processing of continuous bonds and other bond documents in its preparations to go paperless. As of June 1, 2011, Customs will no longer mail copies of bonds to bond principals, but the bond documents will still be available at no charge upon timely request. The request must be received within thirty (30) calendar days of the bond transaction approval date.

EU GSP CHANGES

The European Commission has [proposed](#) significant reforms to the EU Generalised System of Preferences (GSP) that could reduce the number of beneficiary countries from 176 to 80. Countries classified by the World Bank as high or upper middle income economies or which benefit from other trade programs could lose beneficiary status, including the "BRIC" countries of Brazil, Russia, India, and China. Other reforms include changes to product graduation rules and GSP+ benefits, with the aim of benefiting lesser developed countries. Contact Brian Murphy with questions.

FTA TOOL

The Commerce Department, USTR, and Small Business Administration unveiled a new [Free Trade Agreement Tariff Tool](#), which creates a consolidated database for tariff and trade information for 85 percent of goods exported to twenty countries with which the U.S. has a current or pending FTA.

CCL UPDATE

The Commodity Control List (CCL) has been updated to reflect the changes agreed to in the 2010 Australia Group meeting. Export Control Classification Numbers 2B350.c.4 and g.4, 1C351.c.7, and 1C352a.8 were modified slightly, but there was no substantive change in the items controlled. 76 Fed. Reg. [22017](#) (April 20, 2011) and [26583](#) (May 9, 2011).

CUSTOMS UPDATES

- The Customs [Annual Financial Report](#) for FY 2010 has been posted. It breaks down costs and revenues, and shows both are up compared to 2009. AD/CVD refunds were up by more than 33% in 2010.
- Customs has posted [various presentations](#) from the 2011 Customs Trade Symposium.
- Customs has requested comments on the requirement for filing Customs Harbor Maintenance Fee Forms (CBPF 349 and 350). Comments are due July 5. 76 Fed. Reg. [26311](#) (May 6, 2011).

LIBYA AND SYRIA

U.S. export controls are changing with the political environment. Exporters should:

- Conduct extra restricted party screening of all parties as entities (including transportation companies and banks) and individuals get added to, and sometimes taken off, lists on an almost daily basis.
- Watch the Federal Register for changes to the regulations.
- Verify whether any previously obtained export license is still valid. Many have been cancelled. Contact Chuck Ballard with questions.

ITAR DEEMED EXPORTS

The DDTC has issued a Proposed Rule regarding the handling of third country nationals working at non-U.S. facilities. Under the Proposed Rule, non-U.S. facilities could transfer U.S. technology subject to the ITAR without issuance of a license to third country nationals if the facility has effective procedures for controlling the information. Comments are due July 10. 76 Fed. Reg. [27741](#) (May 12, 2011).

FTA

The Obama Administration announced on May 4 that it is ready to begin technical talks with Congressional committees regarding implementation language for the pending Free Trade Agreements for Colombia, South Korea, and Panama.

FDA UPDATES

- The Food and Drug Administration (FDA) has updated Import Alert ([IA # 99-33](#)) regarding the detention of certain products from Japan resulting from the Fukushima radiation releases.
- As required by the Food Safety Modernization Act (FSMA), the FDA has issued two Interim Final Rules, effective July 3, 2011. The first requires prior notice of imported human or animal food to include the name of any country which refused entry of the food. The second allows the agency to order administrative detention of such foods if there is reason to believe the food is adulterated or misbranded. 76 Fed. Reg. [25542](#) and [25538](#) (May 5, 2011).
- The FDA has posted [frequently asked questions](#) regarding the FSMA.
- The FDA has issued guidance on six new product codes for "Research Use Only (RUO)" diagnostic products. CSMS [#11-000086](#) (April 19, 2011).
- The FDA is conducting a review to determine whether its regulations can be made more effective, less burdensome, and take advantage of innovations. Comments are due by June 27. 76 Fed. Reg. [23520](#) (April 27, 2011).

INFORMED COMPLIANCE

The classification of tool sets is a challenge for many importers. Customs has posted a revised version of the [Informed Compliance Publication](#) on "Hand Tool Sets Classified Under Subheadings 8205.90.00 and 8206.00.00."

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 5/15/11		
	<u>APPROVED</u>	<u>CURRENTLY AUTHORIZED</u>
ZONES	275	258
SUBZONES	675	529
<u>PENDING</u>		
ZONES	2	
SUBZONES	21	
MISCELLANEOUS	33	
<u>AVERAGE PROCESSING TIME (MONTHS)</u>		
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