

# BRIEFINGS

ROUTING SLIP

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## CHINA

- On June 1<sup>st</sup>, President Bush informed Congress that he will extend normal trade relations with China through July 2002. Expect a significant fight in Congress. Access "[What's New](#)" on our website.
- The USTR announced that on June 9<sup>th</sup>, the US and China reached a consensus on China's accession to the WTO. As part of the accession, China agreed to recognize Puerto Rico as being within the Customs territory of the U.S. and has begun to refund excess customs duties paid. Access "[What's New](#)" on our website.

## ROYALTIES

In a recent and very significant decision, the Supreme Court of Canada ruled that royalty payments by Mattel Canada to third party licensors were not dutiable. The Court held that the payments were not required as a condition of sale because the vendor could not refuse licensed goods or repudiate the contract if royalties or license fees were not paid. [Canada \(Deputy Minister of National Revenue\) v. Mattel Canada Inc.](#), 2001 SCC36, June 7, 2001.

## FTZ-LIQUIDATED DAMAGES

Customs' general notice T.D. 01-41, effective May 21, 2001, amended the U.S. Customs Service mitigation guidelines pertaining to claims arising from foreign-trade zone violations originally published in Treasury Decision 94-38. Access "[What's New](#)" on our website.

## ICPs

Customs has posted four new Informed Compliance Publications to its website. The new titles available include:

- *Improving Information Technology Invoice Descriptions* This publication should be reviewed by all clients. For the first time, it identifies companies by name who are "on the road" to compliance. Second, it resurrects the very detailed invoice requirements for all imports proposed and withdrawn many years ago. (C.D. 3590-01 May 1, 1989) Access "[What's New](#)" on our website.
- *US-Caribbean Basin Trade Partnership Act*
- *The African Growth and Opportunity Act*
- *Importing: Commercial Samples*

## HMT

- The decision of the CFAC in [BMW Manufacturing Corporation v. U.S.](#), Case No. 00-1135, is being appealed. An Application for Certiorari to the U.S. Supreme Court will be filed in the near future.
- As reported in last month's *Briefings*, the [Thomson](#) case challenges the legality of HMT payments on imports. While the likelihood of success in [Thomson](#) is modest, most client's HMT payments on imports are significant. The statute of limitations is two years. Consideration should be given to the filing of a Summons and Complaint at the CIT to protect your right to a refund. Interested clients should contact Marshall Miller.

## MPF RENEWAL

An extension of the Merchandise Processing Fee (MPF) has been inserted into the Kennedy-McCain Patient Bill of Rights ([S. 872, Sec. 602](#)). The extension would make the MPF valid until 2011, and not tie the funds to the commercial operations of Customs. By being placed in Treasury's general fund it is available for multiple uses. The companion H.R. 526 does not contain the provision. Clients are urged to contact their Congressman to delete the provision.

## CUSTOMS LEADERSHIP

- President Bush has nominated Robert C. Bonner to be the new Customs Commissioner. Mr. Bonner has served as Drug Enforcement Agency Administrator, federal judge, and is currently a partner in a Los Angeles law firm.
- The Senate Finance Committee held a conformation hearing on May 16, 2001 to consider President Bush's choice, Jimmy Gurule, for the position of [Treasury Undersecretary for Enforcement](#).

## STEEL

President Bush announced the initiation of an International Trade Commission Section 201 investigation to determine whether certain steel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat to the U.S. Steel Industry. Access "[What's New](#)" on our website.

## EU CUSTOMS VALUATION

Clients that export to the EU can expect increased attention to proper Customs valuation. The European Court of Auditors issued a report (audit) on customs valuation that was highly critical of both the European Community and its member states. Customs duties are a significant source of total EU revenue (13.5%). Customs valuation provides a baseline for determining national taxes (including value added tax (15-20%) and excise duties) on imported goods. Access "[What's New](#)" on our website for a more detailed Memo on the subject prepared by Tom Lobred.

## DIAMONDS

President Bush has prohibited diamond imports from Sierra Leone; imports controlled through the Certificate of Origin regime are exempt from the prohibition. Access "[What's New](#)" on our website.

## CUSTOMS ACCOUNTABILITY

The FY2000 Accountability Report has been posted to Customs website. The Office of Inspector General (OIG) at Treasury has focused on Compliance Measurement Programs (CMPs). It is revenue driven. Deficiencies are identified; it is noted that no FTZ CMP exists. Expect increased Customs efforts that are revenue driven. [www.customs.gov/imp-exp2/pubform/ar2000.htm](http://www.customs.gov/imp-exp2/pubform/ar2000.htm)

## MEXICAN TRUCKS

The Department of Transportation (DOT) has issued three proposed rules to establish an application form and process, and safety monitoring. 66 Fed. Reg. 22415 (May 3, 2001) A Presidential memorandum effective June 5<sup>th</sup> allows Mexican-owned, US-domiciled carriers to obtain operating authority to provide truck and bus services in the US. [66 Fed. Reg. 30797](#) (June 7, 2001) \$88 Million of the DOT FY 2002 budget implements a federal and state truck safety initiative.

## AES/SEDS

- The House has passed a provision in [H.R. 1646](#) (Sec. 844) that would: impose new criminal penalties of up to \$10,000 per violation, imprisonment, or forfeiture of subject merchandise for knowingly providing false or misleading information on the SED or AES; increase the maximum civil penalty for a carrier's failure to file in the prescribed period to \$1,000 for each day's delinquency, up to \$10,000 per violation; and increase the maximum civil penalty for other violations of Foreign Trade Statistics Law to \$10,000 per violation.
- Sec. 844 also requires regulations making AES mandatory for all exports. Currently, the provisions of Public Law 106-113, which have not yet been promulgated, require that only exports on the Commerce Control List or the State Department Munitions List be processed through AES.

## POAS

Census has posted to its website Foreign Trade Statistics Regulations (FTSR) Letter 175 which emphasizes the requirement that a U.S. or foreign principal party in interest must issue a power of attorney (POA) or other written authorization when authorizing a forwarder or other agent to act on its behalf. [www.census.gov/foreign-trade/regulations/ftsr175.pdf](http://www.census.gov/foreign-trade/regulations/ftsr175.pdf)

## SCIENTIFIC INSTRUMENTS

The International Trade Administration (ITA) and Customs have jointly issued a final rule, effective June 25, 2001, that amends the regulations in 15 CFR Part 301 that governs the duty-free entry of scientific instruments and apparatus into the U.S. by educational and nonprofit institutions under the Agreement on the Implementation of Educational Scientific and Cultural Material (the Florence Agreement) program. [66 Fed. Reg. 28831](#) (May 25, 2001).

## ITC DATAWEB

The USITC Interactive Trade and Tariff Dataweb is now available to the public. All clients should review it. The free service is updated monthly. Dataweb contains import and export information from 1989 through 2001 and includes several classification systems, such as the Harmonized Tariff Schedule and Standard Industrial Classification. Information on special trade programs is also included. Dataweb is available through a link on our website. [dataweb.usitc.gov](http://dataweb.usitc.gov)

## WTO

An updated list of the 141 Members and 33 designated as Observers of the WTO has been published. These countries must begin WTO accession talks within five years of becoming Observers. [www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

## MEXICAN CUSTOMS

A second round of firings by Customs Director Jose Guzman has occurred. 44 of 47 Regional Directors as well as all 50 leaders of the Customs police force have been fired.

## BROKER EXAM

Customs has posted the April 2001 broker exam and answer key to its website. The pass rate was approximately 21%. The next exam date is Oct. 1. [www.customs.gov/imp-exp2/broker/recent.htm](http://www.customs.gov/imp-exp2/broker/recent.htm)

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/01		
	<u>APPROVED</u>	
<u>PENDING</u>		
ZONES	242	6
SUBZONES	449	23
MISCELLANEOUS		22
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	10	
SUBZONES	10	