

# BRIEFINGS

ROUTING SLIP

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## SENTENCING GUIDELINES

The United States Sentencing Commission has published updates to Sentencing Guidelines for U.S. Federal Courts, effective November 1, 2004. These post-Enron changes increase penalties for violations of U.S. law, including import and export activities. Clients should note that these Guidelines reduce penalties if effective compliance programs exist. 69 Fed. Reg. [28993](#) (May 19, 2004).

## C-TPAT

According to Customs, 6,500 companies have applied for C-TPAT. Of the 6,500, 5,000 have submitted security profiles. 750 security profiles have been rejected due to insufficient information. 721 validations have been initiated; 288 have been completed. The Firm has a comprehensive plan to implement and manage a C-TPAT program.

## ADVANCED MANIFEST

Customs has issued a set of [Frequently Asked Questions](#) and responses (May 25, 2004) for the advance electronic presentation of information pertaining to sea, air, rail, and truck cargo prior to its being imported into, or exported from, the U.S.

## MARITIME SECURITY

As approved by the Senate, the Maritime Transportation Security Act of 2004 ([S.2279](#)) includes a provision requiring a \$5,000 penalty to be assessed per bill of lading on cargo sent to a General Order (G.O.) warehouse if it is left for more than 5 days at the pier.

## IMPORT/EXPORT MGMT

It is our view that in order to completely understand current and past import/export activity and identify subjects to be corrected, it is necessary to analyze multiple years of Customs and Census records. We have developed in-house specialized computer programs to create the necessary reports, charts, and graphs. A more detailed description can be found on our [web site](#).

## FDA PRIOR NOTICE

- The third phase of the Food and Drug Administration (FDA) Bioterrorism Act Prior Notice requirements has been implemented. Non-compliance with the Prior Notice requirement will now cause goods to be held and refused entry. Previously, the FDA released goods when insufficient or untimely Prior Notice was submitted.
- The Automated Broker Interface (ABI) will now reject entries not complying with the prior notice requirements. Even in-bond movements require prior notice and must be accepted by ABI prior to entry of the goods.

## FDA EXPORT NOTIFICATION

The Food and Drug Administration (FDA) is considering revising its export regulations that pertain to [export notification](#) and record keeping. A recent Petition challenges the authority of FDA to inspect export records that are held by food and cosmetic companies and claims that the current regulations are overly burdensome.

## SHIPPER DEFINED

The Journal of Commerce reported that for purposes of Advance Manifest transmission, Customs has agreed to define the word "shipper" as "the party that tenders cargo to a carrier" when completing bills of lading.

## EXPORT ENFORCEMENT

The State Department plans to implement a "major campaign" to identify and prevent companies from illegally exporting defense articles. This increase in enforcement comes on the heels of a year of record fines for export violations. Expect the January 2005 implementation of mandatory AES usage to make the campaign more successful.

## HMT LITIGATION

On May 17, 2004, the U.S. Supreme Court issued an order refusing to hear appeals in two Harbor Maintenance Tax (HMT) challenges: one involving imports, the other domestic shipments. The two cases, [Thomson Multimedia Inc.](#) and [C.F. Industries](#), challenged the HMT on various constitutional grounds. The Supreme Court's refusal to hear the appeals effectively puts an end to the challenges to the HMT unless some new argument is developed. As a result, the firms' FTZ HMT case will not proceed.

## FTA - STATE GOVERNMENTS

Outsourcing and job loss concerns have led the Governor of [Pennsylvania](#) to withdraw his consent to have his state bound by government procurement chapters of FTAs.

## ACE UPDATE

- The Automated Commercial Environment (ACE) launched a three (3) month pilot program on June 14 of new account features, including monthly electronic payment/statement capabilities, notifications, alerts, etc. The House and Senate Appropriations Committees have recently approved CBP's Modernization Expenditure Plan, releasing all \$318,690,000 of the funds appropriated to CBP for modernization in FY 2004.
- The GAO recently released a [report](#) on ACE. The GAO expressed particular concerns regarding repeated cost overruns and schedule delays.

## APHIS – EXPORT BAN

A list of bans on U.S. exports due to [Bovine Spongiform Encephalopathy](#) and [avian influenza](#) can be found on the Animal and Plant Health Inspection Service (APHIS) website.

## ITAR AMENDMENTS

State has issued a notice amending certain Categories on the US Munitions List (USML) found in the International Trade in Arms Regulations (ITAR). In addition, State has transferred jurisdiction over certain civil defense articles to BIS. 69 Fed. Reg. [29222](#) (May 21, 2004).

## NAFTA – RULES OF ORIGIN

Senior trade officials for the United States, Canada, and Mexico will meet June 15-17 in Ottawa to discuss amending certain NAFTA Rules of Origin. One particular industry that is pushing for a change in the Rules is the television manufacturing industry.

## BIS SURVEY

The Bureau of Industry and Security is studying the U.S. imaging and sensors industry and may make it mandatory for the industry to respond to the survey. A response to this survey is required by 50 U.S.C. app. Sec. 2155. The survey is expected to be finalized by July 1, 2004.

## FTAs

- The United States and Bahrain completed the U.S.-Bahrain Free Trade Agreement on May 27, 2004. Upon entry into force, 100% of consumer and industrial products will become duty-free. The Agreement makes 98% of U.S. exports of agricultural products to Bahrain duty-free.
- The Office of the U.S. Trade Representative (USTR) has posted to its website the [draft text](#) of the U.S.-Central America Free Trade Agreement (CAFTA) with the Dominican Republic. The [reports](#) of 32 Trade Advisory Groups are also posted.
- The CAFTA was signed by all member countries on May 28, 2004, except the Dominican Republic which cannot sign until June 25, 2004, as it concluded negotiations separately. More than [80%](#) of United States exports of consumer and industrial goods will become duty-free under the Agreement.

## CAFC – MISTAKE OF FACT

The U.S. Court of Appeals for the Federal Circuit has upheld the Court of International Trade's (CIT) determination that Customs' failure to re-liquidate entries on its own initiative does not constitute a mistake of fact that is correctable under the provisions of 19 U.S.C. §1520(c). *Fujitsu Compound Semiconductor, Inc. v. U.S. Slip Op.* [03-1293](#) (Mar. 26, 2004).

## LIBYA EXPORT SANCTIONS

The President lifted export [sanctions](#) against Libya on April 23, 2004. BIS published amendments to the EAR implementing the changes on April 29, 2004. The Office of Foreign Assets Control sanctions remain on persons on the "Specially Designated Nationals" (SDN) lists, and on all flights to or from Libya or operated by Libyan carriers. The lifting of sanctions does not exempt exporters from complying with the regulations of OFAC, State Department, and BIS. 69 Fed. Reg. [23625](#) (April 29, 2004).

## AES

- On June 8, Census and Customs implemented the redesign of the commodity module of the Automated Export System (AES). Changes of commodity formats for both input and output records and new edits could result in the rejection of information that was previously accepted. See AES [Newsletter](#) special edition.
- Expect the Advance Manifest requirements for exports to be implemented soon.

## HTSUS REVISIONS

The International Trade Commission posted to its website a list of [corrections](#) to both the paper and electronic versions of the HTSUS. Supplement 1 to the HTSUS is expected in June 2004.

## SWPM RULES

APHIS has delayed its scheduled publication of the final rule on solid wood packing materials (SWPM) requirements. Clients should carefully review the [APHIS](#) website for country requirements. Many countries already enforce stringent requirements.

## BYRD DISTRIBUTIONS

- Customs has published a Notice pursuant to the continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment) of its intent to distribute monies received from anti-dumping and countervailing duty (AD/CVD) orders. Written certifications must be received by August 2, 2004. 69 Fed. Reg. [31161](#) (June 2, 2004).
- In excess of \$202 million is [available](#) for distribution.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/04		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	260	247
SUBZONES	534	453
<b>PENDING</b>		
ZONES	3	
SUBZONES	13	
MISCELLANEOUS	28	
<b>AVERAGE PROCESSING TIME (MONTHS)</b>		
ZONES	8	
SUBZONES	8	