

# BRIEFINGS

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## CUSTOMS BONDS

The firm is seeing issues for numerous clients with sureties increasingly requiring letters of credit up to 100% of the amount of the bond as collateral for Customs bonds and then failing to timely discharge them. The firm is studying creative solutions. Contact Marshall Miller with questions.

## PRODUCTION EQUIPMENT

The Foreign-Trade Zones Board has provided a [memorandum](#) on production equipment that allows zone users to defer duties on production equipment before the FTZ Board grants Manufacturing Authority. When combined with ASF approval timeframes, this expands the available benefit. However, there is disturbing - and we believe incorrect - language distinguishing distribution and manufacturing equipment. Please contact Marshall Miller or Sean Murray with questions.

## 1099s

At the NAFTAZ convention it was mentioned that Customs has issued 1099s to importers for the difference between an initial claim and the final mitigated amount. The firm is investigating this matter.

## LACEY ACT UPDATE

- Further phase-ins of Lacey Act by Animal and Plant Health Inspection Service (APHIS) are reportedly being delayed awaiting submission of a Congressional report due in November.
- In its [FAQs](#), APHIS has clarified that brokers who sign Lacey Act declarations are responsible for the accuracy of the information.

## WINTER SEMINARS

We have four additional seminars scheduled for 2010:

- Nov. 9, 2010 - Import/Export 101
- Nov. 10, 2010 - Import/Export 201 (including Incoterms 2010)
- Dec. 7, 2010 - FTZ 101
- Dec. 8, 2010 - FTZ 201

More information is available on our website. Register by email to [Penny Freeman](#).

## CBPF 28/29 & DISCLOSURES

Customs has [confirmed](#) its opinion in a July 13, 2010 letter to the American Association of Exporters and Importers that statements in CBPF 28 Requests for Information and CBPF 29 Notices of Action may qualify as "commencement documents," precluding an importer from filing a Prior Disclosure. CBPF 29s "can and will be used" for that purpose and Customs will issue guidelines clarifying when CBPF 28s are disqualifying. The firm recommends that importers carefully review and respond to CBPF 28s, and CBPF 29s to protect themselves from aggressive Customs actions.

## MISC. TRADE BILL

The U.S. Manufacturing Enhancement Act of 2010 (Public Law [111-227](#)), signed into law on August 11, 2010, includes retroactive duty benefits for some merchandise entered between January 1 and August 26, 2010. Refund requests must be filed with Customs by February 7, 2011. Chicago Pipeline [10-17](#) (Sept. 9, 2010).

## NAFTZ CONVENTION

- Gary Schreffler from U.S. Customs announced this week at the NAFTAZ Convention in Miami a streamlined background check process for zones that could be available within two months. The processing time will be reduced to one month.
- New FTZ Board proposed regulations are expected to be published in January.
- The new electronic FTZ air in-bond (QP/WP) is said to be rolling out in the next two months.

## AD/CVD CHANGES

The Department of Commerce has [proposed](#) further new AD/CVD enforcement measures directed at China. Proposed changes include requiring a cash deposit at the start of a preliminary determination, reconsideration of the methodology to account for export and value added taxes for non-market economies (NME), and strengthening its current practice for the issuance of company-specific AD rates in NME cases.

## BIS UPDATE

The new export reform initiative dominated the Bureau of Industry and Security's (BIS) annual update. In addition to previously-discussed aspects of the initiative, discussions included a requirement that products subject to re-export controls be physically marked, that there be more frequent end user checks, and that the Automated Export Systems data will be scrutinized to identify potential violators. Firm schedules and deadlines were not discussed, but will be key. Contact Jerry Greenwell with questions.

## NAFTA RULING

Customs has finally issued an internal advice ruling it had been considering since May 2007. Customs ruled on fungibility of certain types of condensate/diluent used to transport crude oil by pipeline from Canada to the U.S. and allowed use of a NAFTA average inventory method. Customs agreed that all crude oil with non-originating condensate/diluent be assigned to one U.S. importer, while assigning all other crude oil with NAFTA originating condensate/diluent to other purchasers. However, the ruling indicated that record verification is necessary. The exact impact is unclear. Customs may have provided a broader application of NAFTA inventory methods and guidance on the use of other preferential duty programs. [H012415](#) (Aug. 3, 2010).

## ELECTRONIC AGREEMENTS

Effective September 1, all Manufacturing License and Technical Assistance Agreements (MLA/TAA) and other agreements submitted to the Directorate of Defense Trade Controls (DDTC) need to be submitted electronically via DDTC's D-Trade2. DDTC's has [posted](#) guidelines on submitting electronic agreements.

## TRANSSHIPMENTS

The BIS has requested public comment on industry best practices to prevent diversion of controlled items through transshipment points. Comments are due October 18, 2010. 75 Fed. Reg. [53639](#) (Sept. 1, 2010).

## CUSTOMS REG CHANGES

Customs has issued a Final Rule, effective August 26, 2010, which includes amending 19 C.F.R. 146.35(e) to require filing of the CBPF 214 to notify Customs within 15 days (instead of five) that merchandise has been admitted into a FTZ and eliminates a port director's discretion to grant extensions. 75 Fed. Reg. [52446](#) (Aug. 26, 2010).

## ACCOUNT MANAGEMENT

Customs has posted links to a [Webinar](#) and [PowerPoint presentation](#) regarding a Customs "Management by Account" Task Force that is identifying high priority projects that Customs can develop with an account-based approach. The Task Force will request input from the Trade sometime in September.

## MEXICO RETALIATES

Mexico has revised its [list of retaliatory tariffs](#) imposed in March 2009 after the United States Congress cancelled the United States-Mexico trucking pilot program. Sixteen products were dropped but 26 products were added.

## FOREIGN POLICY CONTROLS

The Bureau of Industry and Security (BIS) is seeking public comment on the differences of foreign policy based export controls. Comments are due by October 8, 2010. 75 Fed. Reg. [54540](#) (Sept. 8, 2010).

## WASSENAAR CHANGES

A Final Rule that implements many of the Wassenaar changes became effective September 7. Other changes relating to ECCNs 5A002, 5D002, 6A002, 6A003 and 8A002 will be implemented in a separate rule. 75 Fed. Reg. [54271](#) (Sept. 7, 2010).

## ACE UPDATES

- Customs has resolved the problem with CBP Forms 28, 29, and 4647 created by Customs in ACE for ACE entry summaries not posting to the importers ACE account portal. Effective August 30, 2010 these forms were posted to the "Task List" so importers can review and take action on the forms. CSMS [#10-000204](#) (Aug. 30, 2010).

- In the ACE Trade Account Owner July/August 2010 Update, it was noted that Customs will [reject](#) Entry Summaries with Unknown MID's and new ISF Disposition Codes effective Sept. 15, 2010.

## CHINESE ALUMINUM CVD

The Department of Commerce's Import Administration has issued a Preliminary Determination that Chinese aluminum extrusions are being unfairly subsidized. Commerce will instruct Customs on CVD duty rates ranging from 6.18% to 137.65%, which cover a wide variety of shapes and forms, including hollow and solid profiles, pipes, tubes, bars, and rods classifiable under a variety of HTSUS provisions in Headings 7604, 7608, 7610, 7615 and 7616. 75 Fed. Reg. [54302](#) (Sept. 7, 2010).

## REVISIONS TO CBPF-301

Customs has proposed to revise CBPF-301 to specifically cover continuous activity code bonds for Importer Security Filings, Marine Terminal Operators, and Intellectual Property Rights Samples and to enhance the form to meet automation system requirements. Comments are due on or before October 18, 2010. 75 Fed. Reg. [50772](#) (Aug. 17, 2010).

## DR-CAFTA

- U.S. Customs has issued a Final Rule, effective September 16, 2010 which adopts certain technical changes to the Interim Rule issued in 2008 in respect to preferential tariff treatment for certain claims under DR-CAFTA. 75 Fed. Reg. [50695](#) (Aug. 17, 2010).

- The USTR has requested a formal consultation with Guatemala regarding its failure to effectively enforce labor laws. Comments due September 22, 2010. 75 Fed. Reg. [51869](#) (Aug. 23, 2010).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 9/15/10		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	274	257
SUBZONES	660	515
PENDING		
ZONES	1	
SUBZONES	27	
MISCELLANEOUS	35	
AVERAGE PROCESSING TIME (MONTHS)		
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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