



ACE & FTZs

- As of July 23, 2016, use of the Automated Commercial Environment (ACE) will be mandatory for almost all entry types.
- To avoid Foreign-Trade Zone Weekly Entries crossing between systems, all Type 06 Weekly Entries should be filed in ACE from July 14. 81 Fed. Reg. [32339](#) (May 23, 2016).

ISF IMPORTER DEFINED

Customs has published a Proposed Rule that would expand the definition of "importer" for certain types of Importer Security Filing (ISF) shipments (foreign cargo remaining on board, immediate exportation, transportation and exportation in-bond shipments, and foreign-trade zone admissions) so that the party with the best access to the required information is the party responsible for filing the ISF. Comments are due by September 6, 2016. 81 Fed. Reg. [43961](#) (July 6, 2016).

OCEAN FREIGHT

Under the new Safety of Life at Sea Convention ([SOLAS](#)) requirements, which became effective July 1, shippers must provide the gross weight of the shipment to the ocean carrier. This includes the weight of the contents and the weight of the container. We have updated our format Shipper's Letter of Instruction (SLI) to reflect the change. Contact Chuck Ballard for more information.

SECTION 1592 PENALTIES

The Court of International Trade (CIT) has ruled that an importer cannot be sued for 19 U.S.C. § 1592 civil penalties based on negligence and gross negligence when Customs administratively only alleged fraud in administrative pre-penalty and penalty proceedings. Contact Brian Murphy with questions. [U.S. v. Toth and LBS Marketing, Inc.](#), CIT Slip Op. [16-61](#) (June 20, 2016).

NEW 2016 SEMINAR DATES

The FTZ 101 & 201 seminars have been rescheduled to December.

- November 1 & 2 - Import/Export 101 & 201
- December 6 & 7 - FTZ 101 & 201
- Seminars are offered to Miller & Company clients only. For more details contact [Penny Freeman](#).

ITA

The expanded WTO Information Technology Agreement (ITA), went into effect on July 1. Significant changes have been made to the Harmonized Tariff Schedule of the U.S. (HTSUS) to [reflect](#) the expanded scope of products eligible for duty-free or phased reduced duty rate treatment, such as certain printer ink cartridges, loudspeakers, radio remote controls, optical media, car radios, touch pads, optical elements, lasers, and measuring and checking instruments. Clients are urged to review their Item Master and their FTZ activities to confirm the impact of the HTSUS changes and identify potential opportunities. 81 Fed. Reg. [44129](#) (July 6, 2016).

HTSUS UPDATE

Customs has announced a Harmonized System Update (HSU) that removes the Federal Communications Commission (FCC) agency indicators from various HTS records and makes changes for the expanded ITA. CSMS [#16-000530](#) (June 25, 2016).

BREXIT

The long-term impact of the UK "Brexit" from the EU is unclear, but the [White House](#) has indicated it is optimistic the Transatlantic Trade and Investment Partnership (TTIP) will move forward and that separate negotiations may need to occur with Britain. Some members of Congress are already proposing a separate U.S.-UK free trade agreement.

ACE and FDA

- The functionality for obtaining a Confirmation Number for Food and Drug Administration (FDA) Prior Notice submissions will be transitioned to ACE on July 23, 2016. CSMS [#16-000500](#) (June 17, 2016).
- The FDA has seen a sharp increase in ACE entries containing errors which do not currently result in a reject, but cause issues with FDA's automated processing and admissibility process. CSMS [#16-000557](#) (July 1, 2016).
- FDA has issued interim guidance on Intended Use Codes for drug commodities. CSMS [#16-000495](#) (June 16, 2016).
- FDA will begin a pilot around July 23 to test a new account management function for its Import Trade Auxiliary Communication System (ITACS). The use of importer accounts will allow the agency to move to electronic notices of action. FDA said it intends for the pilot to run to October.

FDA PROPOSED RULE

The FDA has issued a lengthy Proposed Rule on the electronic filing requirements for FDA-regulated merchandise in ACE and International Trade Data System (ITDS). The Proposed Rule would impact all FDA-regulated product areas. We strongly encourage clients to thoroughly consider the Proposed Rule and file comments, which are due August 30, 2016. Contact Sean Murray with questions or for assistance with comments. 81 Fed. Reg. [43155](#) (July 1, 2016).

ISF LIQUIDATED DAMAGES

Customs port officials will no longer be required to send requests for liquidated damages for non-compliant ISF to Customs Headquarters for approval. This could result in an increase in liquidated damages assessments. CSMS [#16-000499](#) (June 17, 2016).

PGA ACE USAGE

Partner Government Agencies (PGAs) have been providing updates on ACE implementation:

- Filers of entries subject to Animal and Plant Health Inspection Service (APHIS) "core" data requirements (i.e., non-Lacey Act) will be [required](#) to file in ACE by August 15.
- The Drug Enforcement Administration (DEA) is beginning its pilot for PGA import and export data about August 1. 81 Fed. Reg. [46058](#) (July 15, 2016).
- The Environmental Protection Agency (EPA) was listed as one of the PGA set for summer ACE deployment. It looks like mandatory ACE filing will be close to the end of 2016.
- The CPSC is currently running an "alpha pilot" and will begin a "beta pilot" in 2017 before moving into the final rulemaking process. According to Jim Joholske of CPSC's Office of Import Surveillance and Inspection, any Final Rule on CPSC data probably will not happen until 2019 or 2020.
- The National Marine Fisheries Service (NMFS) is hoping to publish a Final Rule by the end of this month, with an effective date near the end of August.
- U.S. Fish and Wildlife (FWS) is just getting ready for its pilot. FWS suggested any filers having issues with HTS flagging inquire with FWS.
- The Food Safety and Inspection Service (FSIS) prior notice requirement will automatically be fulfilled by filers of FSIS data in ACE.

DDTC PROPOSED RULES

The Directorate of Defense Trade Controls (DDTC) has published a request for comments on changes to the various forms (DSP-5, DSP-61, etc.) that are used by exporters. DDTC also published a Proposed Rule at the same time to require electronic filing of voluntary self-disclosures. Comments are due by August 19, 2016. 81 Fed. Reg. [39994](#) (June 20, 2016).

BIS PENALTY GUIDELINES

The Bureau of Industry and Security (BIS) has published a Final Rule, effective July 22, with its new penalty guidelines. The guidelines are similar to the current Office of Foreign Assets Control (OFAC) guidelines and the Proposed Rule that was originally published by BIS last [December](#). 81 Fed. Reg. [40499](#) (June 22, 2016).

AES PGA HTS LINKS

Census has [published](#) "Appendix X," which provides HTS/Schedule B code flagging guidance for AES filings for 7 agencies, including ATF, DEA, EPA, and FWS. The flags have been deployed for trade testing, and there is no current implementation date. CSMS [#16-000537](#) (June 27, 2016).

DOUBLE INVOICING

A Chinese apparel exporter has [agreed](#) to pay approximately \$13 million to settle whistleblower allegations that it structured a double-invoicing scheme to underpay duties.

MADE IN THE USA

Rep. Gregg Harper (R.-MS) has introduced a bill to make federal authority to regulate labeling of U.S.-made products exclusive. It would supersede state law requirements on "Made in the USA" labeling. H.R. [5092](#) (April 28, 2016).

NOT CUSTOMS BUSINESS

Customs has ruled that the use of a single bank account to pay duties for two related, but separately incorporated subsidiaries did not constitute "customs business." [HQ H261011](#) (June 3, 2016).

ACE CATAIR UPDATES

Customs has updated the ACE CATAIR Cargo Release Status Notification Implementation Guide, which provides the records pertaining to Cargo Release Status Notifications. CSMS [#16-000539](#) (June 28, 2016).

EXPORT FINES

- BIS has fined Worthington Products and its president \$250,000 for shipping EAR99 goods to Iran via the United Arab Emirates (UAE).
- A package fulfillment service, Fulfill Your Packages, was fined \$250,000 for shipping a FLIR thermal imaging camera to China without a license.
- Mr. [Erdal Kuyumcu](#), the CEO of Global Metallurgy of New York, pled guilty to exporting EAR99 metallic powder to Iran without the required license. Mr. Kuyumcu faces up to 20 years in prison and \$1 million in fines.
- [HyperBranch Medical Technology](#) has agreed to pay \$107,691 to OFAC for exporting sealant to a UAE distributor who regularly sold into Iran.
- [Microwave Engineering Corp.](#) has agreed to pay \$100,000 for releasing International Traffic in Arms Regulations (ITAR) controlled data to a non-U.S. employee in Massachusetts.
- [Alexander Brazhnikov](#) was sentenced to 70 months in prison for smuggling electronics to Russia without a license.

OFAC PENALTY REVISIONS

OFAC has published new, higher penalties for most OFAC violations. Civil penalties related to the International Emergency Economic Powers Act (IEEPA), are going from \$250,000 per transaction to \$284,582. 81 Fed. Reg. [43070](#) (July 1, 2016).

AFGHANISTAN JOINS WTO

Afghanistan [recently](#) became the 164th member of the World Trade Organization (WTO).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 7/15/16		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	291	273
SUBZONES	751	597
PENDING		
ZONES		4
SUBZONES		18
MISCELLANEOUS		50

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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