

# BRIEFINGS

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## CUSTOMS RESIDUE PILOT

Customs has announced its pilot program for the manifesting and entry of residue found in Instruments of International Traffic (IITs). It creates a new type of Section 321 "Residue Entry" and requires the entry of residue exceeding threshold amounts: Truck and Ocean (3%), Air (5%), Rail (7%). Enforcement begins November 25, 2013. Contact Sean Murray for further information. 78 Fed. Reg. [52958](#) (Aug. 27, 2013).

## FDA PLAIRS

- The Food & Drug Administration (FDA) has issued formal guidance on its Pre-Launch Activities Importation Requests (PLAIRs) process. The new process is more formal and limiting. Comments are due September 23, 2013. 78 Fed. Reg. [44572](#) (July 24, 2013).
- The FDA also posted frequently asked questions ([FAQ](#)) document on PLAIRs which includes a formal recognition that foreign-trade zones may be used instead of PLAIRs.

## UNVERIFIED LIST

The Bureau of Industry and Security (BIS) has published a Proposed Rule on exports to entities on the Unverified List. The Proposed Rule includes:

- Requiring an Automated Export System (AES) filing, regardless of value;
  - Suspension of otherwise available license exceptions; and
  - Requiring a statement from the "unverified party" that the good does not otherwise require a license.
- Comments are due October 11. 78 Fed. Reg. [55664](#) (Sept. 11, 2013).

## FALL SEMINARS

- Oct. 8/9 - FTZ 101 & FTZ 201
- Nov. 12/13 - Import/Export 101 & 201

Seminars are offered to Miller & Company clients only. For more details contact [Penny Freeman](#).

## UPCOMING WEBINAR

- October 31 (Halloween) - Scary Stories on import/export penalties and issues. Register for webinars at our [eStore](#) or contact [Victoria Denney](#). Past [webinars](#) are available on our website.

## LASER IMPORTS

- The FDA's Director of Import Operations has sent a letter to Customs requesting that the FDA be advised of all imports of visible and non-visible laser products, including those entered as Informal Entries.
- The FDA has issued a revised [Import Alert 95-04](#) to provide additional guidance to FDA field personnel on laser product imports and the removal of listed manufacturers/shippers from Detention Without Physical Examination status.

## EXPORT REFORM

The Directorate of Defense Trade Controls (DDTC) has [announced](#) that they are now evaluating Commodity Jurisdictions (CJs) for aircraft, aircraft components, and gas turbine engines found in Categories VIII and XIX of the U.S. Munitions List (USML) and from September 1, will provide the new Commerce Control List (CCL) Export Control Classification Number (ECCN) for qualifying products.

## NAFTZ MIAMI

Highlights of the National Association of Foreign-Trade Zones Annual Conference in Miami on September 9-11 include:

- Technical corrections to FTZ Board Regulations will be issued soon due to Commerce Department re-organization as of October 1.
- For 2014, Grantees will be required to provide updated Zone Schedules to the Board for review and on line posting. This will be a serious concern for many Grantees. Contact Scott Taylor with questions.
- The FTZ Board Annual Report data must include Zone Operators that deactivate during the reporting year.
- The NAFTAZ has suggested clarified wording to Customs Headquarters on new background vetting procedures.
- The FDA has developed new internal Weekly Entry Filing application procedures and a format spreadsheet. Contact Sean Murray with questions.

## TPP

- Trans-Pacific Partnership (TPP) negotiators are meeting again on September 18-21 in Washington D.C. They have been working on market access, rules of origin, and intellectual property. They have agreed on across-the-board cumulation rules, which will allow material from any combination of member countries to count in origin determinations.
- South Korea has signaled interest in joining the TPP.

## 2013 TRADE SYMPOSIUM

The Customs [2013 East Coast Trade Symposium](#) will be held October 24-25 in Washington, DC.

## FDA SUPPLY CHAIN

The FDA Center for Drug Evaluation and Research has announced a Secure Supply Chain Pilot Program (SSCPP), which will allow expedited entry for imports of specific finished drug products and active pharmaceutical ingredients (APIs). Applicants must meet certain eligibility requirements and apply by December 31, 2013. Contact Sean Murray with questions. 78 Fed. Reg. [51192](#) (Aug. 20, 2013).

## POWERS OF ATTORNEY

A federal district court has dismissed an importer's action against its broker and forwarder for negligence, breach of fiduciary duty, negligent misrepresentation, and fraudulent inducement relating to misclassifications, entry rejections, and broken promises of the broker/forwarder. The court relied in part on the claim limits in the Power of Attorney. [Michael J. Kearins as successor in interest to Pinnacle Interior Elements, Ltd. v. Panalpina, Inc.](#), No. 10-CV-01198 (RER), 2012 (E.D.N.Y. July 30, 2012, Aug. 28, 2013).

## USDA COOL RULE

A U.S. District Judge recently denied a bid from meat and poultry groups in the U.S., Mexico, and Canada to halt the U.S. Department of Agriculture's efforts to implement new meat labeling regulations, finding that the groups were not likely to convince the court that the rules were unconstitutional. [American Meat Institute v. United States Department of Agriculture](#) No. 13-CV-1033 (KBJ) (Sept. 11, 2013).

## C-TPAT VALIDATIONS

Customs has [announced](#) 1,284 Customs-Trade Partnership Against Terrorism (C-TPAT) validations to date for 2013. This includes 339 initial validations and 945 revalidations. Customs plans to complete 2,200 validations this year. There have been a total of 1,960 suspensions and 1,242 removals since the program began.

## "AGILE" ACE DEPLOYMENT

Customs [plans](#) to implement its first deployment under the new Automated Commercial Environment (ACE) "agile" development program on October 5. It will allow for an expansion of the Simplified Entry pilot and perform some validation of Harbor Maintenance Fees and classifications for ACE Entry summaries.

## BUY AMERICAN

Customs has determined that certain hard disk drives (HDDs) are U.S. origin for U.S. government procurement purposes. Customs ruled that HDDs which are fully assembled in Asia but non-functional when imported into the United States, undergo a substantial transformation when programmed with U.S.-origin firmware and primarily U.S.-developed software. 78 Fed. Reg. [51737](#) (Aug. 21, 2013).

## OFAC PENALTIES

- The Office of Foreign Assets Control (OFAC) has announced a \$346,530 penalty against [Communications and Power Industries LLC](#) (CPI) of Palo Alto for arranging sales of x-ray equipment to Iran. CPI voluntarily disclosed the violation.
- [World Fuel Services Corporation](#) of Miami has agreed to pay \$39,501 for facilitating the fueling of vessels and aircraft in Iran, Sudan, and Cuba.

## TRADEMARK INFRINGEMENT

A federal district court has refused to set aside a \$4 million judgment against a customs broker for willful contributory trademark infringement. [Coach Inc. et al v. Celco Customs Serv. Co. et al](#), No. CV 11-10787 MMM (FMOx) (C.D. Cal. filed Aug. 9, 2013).

## FDA PRODUCT CODES

The FDA will be deleting some Center for Devices and Radiological Health [product codes](#), effective September 30. CSMS [#13-000441](#) (Sept. 5, 2013).

## BROKERING

The Directorate of Defense Trade Controls (DDTC) has released its long-awaited Final Rule on brokering. Among the changes are the definitions of "broker" and "brokering activities," which now excludes some legal activities conducted by attorneys and activities solely involving financing, insuring, and transportation, provided the activities are not part of arranging transactions. 78 Fed. Reg. [52680](#) (Aug. 26, 2013).

## FOREIGN POLICY

BIS has requested comments on the effect of foreign policy-based export controls. Comments are due by October 7, 2013. 78 Fed. Reg. [54623](#) (Sept. 5, 2013).

## OFAC MEDICAL SUPPLIES

- OFAC has updated its list of basic medical supplies that may be exported to Iran per 31 C.F.R. § 560.530(a)(3)(ii). 78 Fed. Reg. [54731](#) (Sept. 4, 2013).
- OFAC is requesting comments as to the effectiveness of its licensing process relating to the export of agricultural products, medicines, and medical devices to Sudan and Iran. Comments are due by October 3. 78 Fed. Reg. [54199](#) (Sept. 3, 2013).

## WCO VALUATION

The World Customs Organization (WCO) Technical Committee on Customs Valuation has published Advisory Opinion 4.15 regarding the dutiability of royalties paid to a third party licensor by an importer. Contact Tom Lobred with questions.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 9/15/13		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	283	266
SUBZONES	705	552
PENDING		
ZONES		5
SUBZONES		15
MISCELLANEOUS		45
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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