

# BRIEFINGS

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## TRUSTED TRADER PROGRAM

Customs has announced a new Trusted Trader program that would unify the Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) programs for interested participants and involve the Food and Drug Administration (FDA) and Consumer Product Safety Commission (CPSC). Applications are now being accepted, and test participants will be selected beginning July 16. Companies can still individually apply to C-TPAT and ISA, but ISA may ultimately be discontinued. Contact Sean Murray with questions. 79 Fed. Reg. [34334](#) (June 16, 2014).

## CONFLICT MINERALS

The first reports on the use of conflict minerals originating in the Democratic Republic of the Congo (DRC) or an adjoining country were due May 31, 2014. Multiple companies acknowledged in their filings that their products could contain conflict minerals. A rigorous and effective method of assessing supply chains is useful for supply chain security, quality, landed cost, and other purposes. Contact Chuck Ballard with questions.

## IN-BOND GUIDELINES

Los Angeles Customs has issued guidelines for preparing CBPF 7512s that include a "more stringent description" and require in-bond documents for cargo arriving by truck to be submitted to the port closest to the warehouse where the freight is located. Los Angeles Public Bulletin [LA 14-011](#) (May 30, 2014).

## SUMMER WEBINARS

Upcoming Webinars:

- June 19 - NAFTA/FTA - Qualification and Certificates of Origin
- July 17 - QP/WP - From ACS to ACE
- August 21 - Incoterms
- Register for webinars at our [eStore](#) or contact [Victoria Denney](#). Past [webinars](#) are available on our website.

## GSP

- The Generalized System of Preferences (GSP) program, which expired on July 31, 2013, remains in limbo with lawmakers. The New York/New Jersey Customs field office recently advised that they will deny any protests or requests to extend liquidation that are filed to delay liquidation until GSP is renewed. Importers should continue to use SPI "A" to claim GSP so that Customs can process refunds if and when GSP is retroactively renewed. Port of New York/Newark Info. Pipeline No. 14-019-NWK (May 29, 2014).
- President Obama recently [announced](#) his intent to withdraw GSP status for Russia.

## ISF ENFORCEMENT

- Customs recently provided updated guidance to the ports regarding Importer Security Filing (ISF) enforcement and the issuance of liquidated damages claims. The guidance calls for three warnings to an importer before issuing a claim for ISF noncompliance. CSMS [#14-000283](#) (May 16, 2014).
- Customs recently issued an [addendum](#) to the ISF Frequently Asked Questions (FAQs) that outline the enforcement strategy.

## BNP AND U.S. SANCTIONS

The U.S. government is pushing for stiff penalties against BNP Paribas SA bank for its potential evasion of U.S. sanctions against Sudan. Conditions of settlement may include the termination of several employees, a guilty plea, a \$10 billion financial penalty, and temporary suspension of the bank's ability to process dollar transactions through New York. Reports indicate that the company has [attempted](#) to claim a short 2004 memo from its law firm was a defense. However, reportedly BNP did not disclose all activities to the law firm, and BNP did not follow the legal advice in the memo, so the "advice of counsel" defense may not be available.

## 100% CARGO INSPECTION

Lawmakers passed the law that requires 100% scanning of U.S. bound maritime cargo containers in 2007. DHS Secretary Jeh Johnson recently told Congress that he was [waiving](#) application of the law a further two years due to financial and practical constraints.

## EAR UPDATED

The Bureau of Industry and Security (BIS) has updated the Export Administration Regulations (EAR) and the Commerce Control List (CCL). The first changes on May 27 related to missile technology. A total of eight ECCNs in Categories 1, 6, and 9 are affected. Additional changes clarified and aligned some items to the International Traffic in Arms Regulations (ITAR). Some changes do not go into effect until July 1. 79 Fed Reg. [30021](#) (May 27, 2014); 79 Fed. Reg. [32611](#) (June 5, 2014).

## FDA DETENTION OF DRUGS

The FDA has issued a Final Rule, effective June 30, 2014 that will allow the FDA to administratively detain drugs when an agency official has "reason to believe" they are adulterated or misbranded. This is closely modeled after the FDA's authority to detain devices and tobacco products. 79 Fed. Reg. [30716](#) (May 29, 2014).

## FDA GUIDANCE

As required in the [Drug Supply Chain Security Act](#), the FDA will [require](#) beginning January 1, 2015, that trade partners notify the FDA when they come across "illegitimate product."

## U.S. – PANAMA FTA

Customs has issued its Final Rule on the U.S.-Panama Free Trade Agreement implementation regulations. The proposed Interim Regulations were adopted in full without any changes. 79 Fed. Reg. [29077](#) (May 21, 2014).

## PRODUCTION EQUIPMENT

Clients are reminded that while there are real duty savings opportunities when importing production equipment, it is not always easy to classify. In [HQ H213695](#) (Mar. 31, 2014), Customs disagreed with the importer that four machines used on a vehicle assembly line to produce exhaust bellows were classified in a single, duty-free classification (Harmonized Tariff Schedule of the United States subheading 8479.81.00) because they were not a complete "functional unit." Contact Brian Murphy with questions.

## BURMA SANCTIONS

Although many of the sanctions on Burma (Myanmar) have been lifted, sanctions do remain and there are still a number of blocked people and entities in Burma. The President extended the "National Emergency with Respect to Burma" on May 15. 79 Fed. Reg. [28807](#) (May 19, 2014).

## NEW CBP FORM 5106

The updated Customs Form [5106](#) for Importer of Record information may be used immediately and will be required as of September 1, 2014. CSMS [14-000321](#) (June 5, 2014).

## TPP

The Office of the U.S. Trade Representative has [released](#) a summary document of U.S. negotiating objectives for the Trans-Pacific Partnership (TPP) by subject, such as trade in goods, environment, and e-commerce. Prime Minister Tony Abbott of Australia indicated during a visit to the White House on June 12 that he believed TPP negotiations could be completed by the end of 2015.

## CUSTOMS AND FDA DATA

The FDA and Customs have [requested](#) input from the Advisory Committee on Commercial Operations (COAC) on how to improve data quality reported to FDA and Customs. Currently 25% of reported data has errors.

## SOFTWARE VALUATION

Many people take the customs valuation of software for granted, but some countries are reading the existing World Trade Organization (WTO) agreement narrowly and assessing duties. As a result, the WTO has [proposed](#) expansion of the agreement on software valuation. Contact Tom Lobred or Sean Murray with questions.

## OFAC SEARCH TOOL

The Office of Foreign Assets Control (OFAC) has announced a new [search tool](#) on its website to use with its lists of Special Designated Nationals (SDNs) and Foreign Sanctions Evaders (FSE).

## RIGHT TO MAKE ENTRY

At its May 22 meeting in Miami, COAC recommended that ACE allow Importers of Record to control and limit by Importer of Record number which Customs brokers make entry in each port of entry.

## GREEN GOODS

The European Commission is exploring whether the scope of the "green goods" multilateral negotiations can be expanded to also address non-tariff barriers and environmental services. The U.S. has previously indicated it prefers limiting the scope to eliminating tariffs on environmental goods.

## ENTRY AND SEIZURE

The U.S. Court of International Trade (CIT) has ruled that, for the purpose of calculating detention and exclusion periods under 19 U.S.C. § 1499, merchandise is presented for examination when the last container arrives at a Container Examination Station and is unloaded with explanatory documents. [Blink Design, Inc. v. U.S.](#), CIT Slip Op. [14-56](#) (May 21, 2014).

## FOKKER FINED \$50 MILLION

[Fokker Services B.V.](#) of the Netherlands has settled with the Office of Foreign Assets Control (OFAC) for \$50 million for violating the U.S. trade sanctions programs against Iran and Sudan. Fokker was accused of exporting U.S.-repaired aircraft parts to Iran and Sudan. The initial penalty was approximately \$145 million, but it was mitigated since Fokker voluntarily disclosed the violations.

## AGOA FINAL RULE

Customs has adopted a Final Rule on the African Growth and Opportunity Act (AGOA). The Final Rule includes specific documentary and procedural requirements to obtain preferential treatment. 79 Fed. Reg. [30355](#) (May 27, 2014).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 6/15/14			
	APPROVED	CURRENTLY AUTHORIZED	
ZONES	286	268	
SUBZONES	715	561	
PENDING			
ZONES		4	
SUBZONES		15	
MISCELLANEOUS		35	

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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