

# BRIEFINGS

VOLUME 26, NO. 8

August 15, 2014

## POST-IMPORT FTA/STP CLAIMS

Customs has [issued](#) new guidance directing that post-liquidation Protests asserting initial claims for preferential duty treatment under certain programs, including AGOA, CBERA, CBTPA, GSP, Civil Aircraft Agreement, Pharmaceutical Products Agreement, Insular Possessions, and the Australia, Israel, Jordan, and Singapore FTAs, will be denied as not protestable. Customs will accept post-importation claims for such programs prior to liquidation through PEAs or PSCs. Contact Brian Murphy for guidance.

## CENSUS DDTC UPDATES

Census and the State Department have apparently agreed to allow exporters who have filed a disclosure with the Directorate of Defense Trade Controls (DDTC) to update their Automated Export System (AES) records in instances where the exporter did not initially file an AES submission. Nothing has been issued in writing yet. Contact Jerry Greenwell with questions.

## WTO

The August 1 deadline for [finalizing](#) the WTO's Trade Facilitation Agreement (TFA) was missed due to Indian objections over food security issues. Countries are now scrambling to determine how to proceed.

## IRAN SANCTIONS

The relaxation of sanctions on Iran has been extended to November 24. The vast majority of sanctions remain in place. 79 Fed. Reg. [45233](#) (Aug. 4, 2014); 79 Fed. Reg. [45228](#) (Aug. 4, 2014).

## SUMMER WEBINARS

Upcoming Webinars:

- August 21 - Incoterms
- September 18 - Export Party Responsibilities
- Register for webinars at our [eStore](#) or contact [Victoria Denney](#). Past [webinars](#) are available on our website.

## FALL SEMINARS

- Nov. 11 - Import/Export 101
- Nov. 12 - Import/Export 201
- Seminars are offered to Miller & Company clients only. For more details contact [Penny Freeman](#).

## MADE IN USA CLAIMS

The Federal Trade Commission (FTC) has [settled](#) charges against Made in the USA Brand, LLC, a company that provides "Made in the USA" certification seals to other companies. It allowed the other companies to use the seals without independently verifying their products were actually made in the U.S. Records show the company never rejected an application to use its certification, nor did it ever terminate a company's use of the certification.

## IN-BOND ISSUES

The Court of Appeals for the Federal Circuit (CAFC) has ruled that a bonded carrier is liable for more than \$106,000 in Customs duties on missing apparel shipped under a Transportation and Exportation (T&E) entry. The T&E was supported by a CBPF 7512 stamped at the port of exportation and by non-genuine Mexican import pedimentos. [U.S. v. C.H. Robinson Company](#), CAFC Slip Op. [13-1168](#) (July 28, 2014).

## RUSSIAN SANCTIONS

The sanctions against Russia continue to expand as the situation in the Ukraine deteriorates:

- On July 16, the Office of Foreign Assets Control (OFAC) announced new sanctions and a new list, the [Sectoral Sanctions Identification \(SSI\) List](#). OFAC has also expanded the number of Specially Designated Nationals and published a list of [Frequently Asked Questions \(FAQs\)](#). 79 Fed. Reg. [46302](#) (Aug. 7, 2014).
- The Export-Import Bank has suspended new loan approvals.
- The Bureau of Industry and Security (BIS) has added several entities to the Entity List, and published new sanctions covering eight Export Control Classification Numbers (ECCN) when used in energy sector projects. 79 Fed. Reg. [42452](#) (July 22, 2014); 79 Fed. Reg. [45675](#) (Aug. 6, 2014).
- In response to these sanctions, Russia has banned the import of agricultural products from the West. Clients are reminded to be aware of the most current – and potential future – sanctions before entering into agreements. Contact Chuck Ballard with questions.

## TTIP

The U.S. and the European Union are considering two pilot programs to test how the chemical industry and governments can increase regulatory cooperation under the Transatlantic Trade Investment Partnership (TTIP). One pilot would have the U.S. EPA and the European Chemicals Agency (ECHA) share the testing of chemical substances. A second pilot would better harmonize chemical classification and labeling.

## BONDED WAREHOUSES

On May 15, 2014, Customs Headquarters issued an Internal Advice Ruling that a Class 9 Bonded Warehouse Operator may sell merchandise for domestic use in addition to their duty-free goods, provided that a Customs entry is filed and applicable duties, taxes, and fees are paid. Contact Marshall Miller with questions. HQ [H161256](#) (May 15, 2014).

## BIS UPDATE

Assistant Secretary for Export Enforcement, David Mills indicated at the recent BIS Update Conference that BIS intends to treat voluntary self disclosures involving "600 series" products like the Directorate of Defense Trade Control (DDTC) treats U.S. Munitions List (USML) disclosures. Ultimately, both agencies expect to more closely follow the OFAC model, which bases penalties in part on the value of the exported merchandise.

## EO NOMINE AND USE

The CAFC has remanded a case involving the tariff classification of screws, ruling that use may be considered when classifying under an *eo nomine* tariff provision when the name inherently suggests a type of use or where the "use of subject articles defines an article's identity." GRK Canada, Ltd. v. U.S., CAFC Slip Op. [13-1255](#) (Aug. 4, 2014).

## GREEN GOODS

The next round of negotiations on the Environmental Goods Agreement (otherwise known as the Green Goods Agreement) will begin in September. The 14 countries negotiating the agreement are expected to submit "wish lists" of products for duty elimination.

## RELIQUIDATION

Customs has issued a second disturbing ruling, stating that it can reliquidate entries long after they were deemed liquidated. HQ [H136435](#) (May 22, 2014).

## CCL UPDATES

On August 4, BIS published updates to the Commerce Control List (CCL) to reflect numerous changes made at recent Wassenaar Arrangement meetings. BIS has also removed controls on "Biosensor Systems" (ECCN OA521) and published changes from the Nuclear Suppliers Group Meetings impacting CCL Categories 1, 2, 3, and 6. 79 Fed Reg. [45287](#) (Aug. 4, 2014); 79 Fed Reg. [45088](#) (Aug. 4, 2014); and 79 Fed. Reg. [46315](#) (Aug. 7, 2014).

## ASSISTS FORMULA

Clients are reminded that there is some flexibility in the allocation of assists to entries. Customs has ruled that it was possible for an importer to apportion engineering and design services by a formula based on the annual foreign engineering payments and the annual costs of goods. HQ [H231836](#) (June 19, 2014).

## PARTS PENALTY

The U.S. is seeking civil penalties for the alleged negligent misclassification of five Customs entries of umbrella parts. They were entered incorrectly as duty-free umbrellas, low-duty "other" steel or aluminum articles, and duty-free umbrella parts, rather than in high duty rate provisions for other umbrella parts. U.S. v. Poggesi USA, Inc., [1:14-cv-00170-N/A](#) (CIT July 15, 2014).

## COOL LABELING

The U.S. Court of Appeals for the D.C. Circuit has denied a bid to enjoin implementation of the USDA country of origin labeling (COOL) regulations that require disclosure of the countries where an animal was born, raised, and slaughtered on meat products. The COOL regulations are subject to a World Trade Organization (WTO) dispute and could lead to Mexican and Canadian retaliatory sanctions. American Meat Institute v. U.S. Dept. of Agriculture, D.C. Cir. [13-5281](#) (July 29, 2014).

## COUNTERFEIT CABLES

A Seattle-area tech supply company has been sentenced to 5 years of organizational probation, its owner, Mr. Daniel Oberholtzer, was [sentenced](#) to 37 months in prison, and \$717,000 in proceeds must be forfeited for conspiring to produce and sell fake CISCO products. Counterfeit Chinese shipments were labeled as "samples."

## 2017 HTS

The World Customs Organization has [announced](#) the completion of the 2017 revisions to the Harmonized Tariff Schedule. Some changes will include:

- Fish and fishery products
- Substances controlled under the Chemical Weapons Convention
- Forestry Products
- Pharmaceutical preparations containing ephedrine, pseudoephedrine, or norephedrine
- Unglazed and glazed ceramic products
- Light-emitting diode (LED) lamps and multi-component integrated circuits (MCOs).

## BLOCKED ENTITIES

OFAC has announced new [guidance](#) on entities owned by blocked parties on the Special Designated Nationals List and other lists administered by OFAC. 79 Fed. Reg. [47726](#) (Aug. 14, 2014).

## ISF ENFORCEMENT

The Port of [New York/Newark](#) and the Port of [San Francisco](#) have revised their position on Importer Security Filing (ISF) enforcement. They will issue three warnings to an importer before issuing liquidated damages claims.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 8/15/14		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	286	268
SUBZONES	719	565
PENDING		
ZONES	5	
SUBZONES	13	
MISCELLANEOUS	36	

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.  
© 2014 Miller & Company P.C.

4929 MAIN STREET  
KANSAS CITY, MO 64112  
816.561.4999  
FAX 816.561.5999  
E-MAIL [intllaw@millerco.com](mailto:intllaw@millerco.com)

1875 I STREET N.W., 5TH FLOOR  
WASHINGTON, D.C. 20006

233 BROADWAY, SUITE 2702  
NEW YORK, NEW YORK 10279