

# BRIEFINGS

ROUTING SLIP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 2008 TRADE DATA

- Customs has [issued](#) FY 2008 (10/1/07-9/30/08) trade statistics showing that while Customs entry volume decreased from 31.4 million entries to 31 million, value increased from \$2 trillion to \$2.2 trillion and duty collection increased from \$33 billion to \$34.5 billion. Note that entry/value data declined precipitously thereafter.

- The U.S. International Trade Commission (ITC) has released "Shifts in U.S. Merchandise Trade 2008" which illustrates that, despite the substantial downturn in trade during the last quarter, U.S. imports and exports of goods and services were up by 9% for the calendar year. USITC Pub. [4089](#) (July 2009).

- The U.S. ITC has also released "The Year in Trade 2008" focusing on the operation of various trade activities and programs. Highlights involve an 8% increase in exports to Free Trade Agreement (FTA) partners, constituting 38% of total U.S. exports, while imports of goods from FTA partners only increased 4.7%, or 30% of total U.S. imports. Excluding NAFTA trade, the trade surplus with FTA partners increased from \$3.9 billion in 2007 to \$15.6 billion in 2008. USITC Pub. [4091](#) (July 2009).

- The Bureau of Industry and Security (BIS) has posted its [Annual Report to Congress for FY 2008](#) which provides a summation of BIS enforcement actions, regulatory changes, and export licensing statistics.

## 2009 Seminar Schedule

The firm is hosting a reception on Customs/Trade/FTZ Developments at the NAFTA Annual Convention in Dallas, Texas on September 22. Please contact Kelly Hall at [khal@millerco.com](mailto:khal@millerco.com) to reserve a space.

## Import/Export Records

We have been seeing increased government enforcement efforts across the entire country in imports, exports, and free trade agreements (including increased verification of U.S. exporters by foreign FTA partners). The best means to identify compliance concerns before the government is to secure complete import and export data from government sources for detailed analysis. The firm has developed proprietary software to simplify and speed the process. Contact Marshall Miller for more information.

## DHL SETTLES VIOLATIONS

DHL has settled with the Bureau of Industry and Security ([BIS](#)) and the Office of Foreign Asset Control ([OFAC](#)) regarding the aiding and abetting of illegal exports to Syria, Iran, and Sudan and recordkeeping violations. DHL agreed to pay \$9,444,744 in civil penalties and to hire an external auditor to conduct annual audits in 2010 and 2011. Clients are reminded of the need to have their own internal export control program, and not merely rely on forwarder controls.

## RESIDUAL CHEMICALS

Customs has issued a final ruling requiring importers to declare residual chemicals in containers. This could, depending on the applicable classification, subject these residuals to Customs duties. Interestingly, it allows an estimated amount to be declared and updated later. [43 Cust. B. & Dec. 28](#) (July 17, 2009).

## CUSTOMS BILLS

- Senate Finance Committee leaders Senator Max Baucus (D-MT) and Senator Charles Grassley (R-IA) have [introduced](#) the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (S.1631) which includes numerous and varied changes. Highlights include the establishment of an import safety working group; the use of 10+2 data for commercial enforcement purposes; the establishment of a National Intellectual Property Rights Coordination Center within ICE; the creation of new high level trade enforcement positions; additional funding for ACE and ITDS; the addition of new C-TPAT benefits; liberalized drawback procedures; and the establishment of an interagency Customs, Treasury, USTR, and DHS group to discuss regulatory changes.

- The Miscellaneous Tariff Bill (MTB) is in doubt for passage in 2009. The Senate is still working on a compromise with the House on disclosure requirements for beneficiaries of the bill.

## ISF (10+2) UPDATES

- Customs has issued a CSMS message informing Importer Security Filing (ISF) filers that certain edits to ISF filings will result in "ISF REJECTED" error messages, rather than the current "ACCEPTED WITH WARNINGS" message. Edits such as missing Importer of Record, incorrect Action Reason Code, and IRS number or Social Security number not on file will be affected starting August 15, 2009. CSMS [#09-000286](#) (July 12, 2009).

- As announced in last month's Briefings, Customs issued mitigation guidelines for the assessment and cancellation of claims for liquidated damages incurred for failure to comply with the ISF requirements. [43 Cust. B. & Dec. 28](#), (July 17, 2009).

## ACE REPORTS

Customs has [posted](#) new versions of the ACE Portal Reports [Dictionaries](#), and a reference guide for importers, brokers, carriers, and sureties on the most frequently accessed ACE reports.

## STP LITIGATION

The Court of International Trade (CIT) has upheld a Customs decision to deny an importer's claim for preferential treatment of medical uniforms from Swaziland under AGOA because of inconsistent records provided by the importer in support of the claim. [Polly U.S.A. v. US](#), CIT Slip Op. 09-80 (Aug. 6, 2009). This decision reminds clients of the need to ensure up front that they are obtaining the necessary records to support claims for preferential duty treatment.

## AD AND AGR

As another reminder on the dangers of antidumping/countervailing (AD/CVD) duty entries Customs has issued a ruling that antidumping duty was payable on entry into the U.S of Italian ball bearings that had been previously entered into the U.S., with antidumping duty paid. HQ [H033175](#), (May 28, 2009).

## HTS CHANGES

The World Customs Organization (WCO) Customs Cooperation Council has approved a set of [amendments](#) to the Harmonized Commodity Description and Coding System to be implemented as of January 1, 2012. Some seldom-used classifications are to be deleted and new classifications will be added for food security, pesticides, and ozone depleting chemicals.

## NEW ITDS CLASSIFICATION?

An International Trade Data System (ITDS) committee has [recommended](#) creating new "product information codes" to provide participating government agencies with information about imports, to file prior to shipment arrival. The proposal now goes to the ITDS board of directors. Should this proposal gain traction, it would essentially create another classification system for OGA purposes.

## NEW WPM MARKING

Due to the number of fraudulent Chinese phytosanitary certificates, effective September 1, 2009, the Canada Border Services Agency (CBSA) is requiring a valid International Plant Protection Convention (IPPC) [International Standard](#) for Phytosanitary Measures (ISPM) 15 mark for entry of wood packaging materials that originate in China. This change is directly in line with U.S. requirements.

## HTS UPDATE

The Automated Export System (AES) Import [Concordance](#) has been updated as of July 1, 2009 to reflect all current HTS Numbers that can be reported for export purposes and [excludes](#) HTS numbers that are not valid for AES.

## MPF EXEMPTIONS

Customs Headquarters has issued guidance to Field Operations concerning [Merchandise Processing Fee](#) (MPF) treatment under various trade preference programs.

## FTAs

- President Obama's chief economic advisor, Larry Summers, recently [indicated](#) that the Administration is not likely to focus on the passage of the three pending FTAs until the U.S. and global economies improve.

- The USTR has requested comments on labor-related issues in the pending FTA with Colombia and the impact of the FTA with Korea. Comments are due September 15, 2009. 74 Fed. Reg. [37759](#) (July 29, 2009) (Colombia); 74 Fed. Reg. [37084](#) (July 27, 2009) (Korea).

- The General Accounting Office (GAO) has issued a progress report on the FTAs with Jordan, Chile, Singapore, and Morocco. Trade increases ranged from 42% with Singapore to 259% with Jordan. The report also finds that the FTA provisions to affect labor and environmental standards have been less successful. GAO [09-439](#) (July 10, 2009).

## EXPORT LICENSE DELAYS

A recent court decision held that the Office of Foreign Asset Control's (OFAC) delay in processing a food-related export license to Iran could be afforded declaratory relief. This holding could provide importers and exporters with more opportunities to challenge administrative agency licensing procedure delays and inconsistencies. [Del Monte v. U.S.](#), 570 F.3d 316 (D.C., Cir. 2009).

## GAO ON CLIMATE CHANGE

The GAO has issued a report on the proposed climate change legislation, including potential trade measures. GAO [09-724R](#) (July 2009).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 8/15/09		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	273	255
SUBZONES	644	538
PENDING		
ZONES	2	
SUBZONES	17	
MISCELLANEOUS	34	
AVERAGE PROCESSING TIME (MONTHS)		
ZONES	8	
SUBZONES	10	