

ATTORNEYS AT LAW

BRIEFINGS

ROUTING SLIP

FTZ CONTROVERSIES

There has been significant opposition at recent public hearings for three subzone projects involving Thyssen Krupp Steel and Stainless USA, LLC; Dow Corning Corp.; and REC Silicon. (Dockets [51-2008](#), [20-2009](#), and [22-2009](#)). The steelworkers union and others have expressed concerns, as have Congressman Pete Visclosky (D- IN), Chairman of the Congressional Steel Caucus, and 14 other Members of Congress. Opponents have disputed the zone admission of AD/CVD material used in exports without payment of AD/CVD duties even though both TIBs and Bonded Warehouses provide the same relief. Grantees and FTZ User Firms need to take strong action to neutralize the opposition. 73 Fed. Reg. 58535 (Oct. 7, 2008); 74 Fed. Reg. 21921 (May 8, 2009); 74 Fed. Reg. 25488 (May 28, 2009).

FTZ ANNUAL REPORT

The FTZ Board has further revised its proposed Annual Report format. The most significant revision is a proposed shift from reporting on a Federal fiscal year basis (Oct. 1 – Sept. 30) to reporting on a calendar year basis. The Board refused to adopt the NAFTAZ suggestions for “confidentiality” changes. This is a key change that should be adopted. Interested parties have until October 16, 2009 to submit comments, and we encourage clients to comment. 74 Fed. Reg. [46979](#). (Sept. 14, 2009).

2009 Seminar Schedule

The firm is hosting a reception on Customs/Trade/FTZ Developments at the NAFTAZ Annual Convention in Dallas, Texas on September 22. Please contact Kelly Hall at khall@millerco.com to reserve a space.

FALSE STATEMENTS

Stressing the importance of always making accurate declarations to government officials, BIS recently fined an export manager individually, as well as the company she worked for, for making a false or misleading statement in the course of an investigation. The BIS indicated that she stated an outside export control consulting firm determined that all of the company’s products were classified as EAR99 and were not export-controlled, but the consulting firm produced documentation to the contrary. [BIS Charging Order](#) (Aug. 13, 2009); [BIS Settlement Agreement](#) (Aug. 10, 2009).

LACEY ACT UPDATES

The Animal and Plant Health Inspection Service (APHIS) has published a revised phase-in schedule for Lacey Act declarations. Some items were removed from Phase III, and its enforcement begins October 1, 2009. Phase IV was substantially revised, and its enforcement begins April 1, 2010. Public comments are due by November 2, 2009. 74 Fed. Reg. [45415](#) (Sept. 2, 2009).

CHINA TRADE DISPUTES

• President Obama has [decided](#) to impose safeguard duties for three years on imports of tires for passenger vehicles and light trucks from China to address a surge of imports. The tariffs will be at 35% for the first year, and 30% and 25%, respectively, for the next two years.

• The U.S. Department of Commerce has [released](#) a preliminary finding that China violated U.S. trade laws by providing subsidies to Chinese companies manufacturing steel pipes used by the oil and gas industry. Additional duties of 11% to 31% could be levied on imports of steel pipes from China if the International Trade Administration affirms the findings in a final determination to be issued in November.

WTO AIRBUS RULING

According to numerous sources, a World Trade Organization (WTO) panel has issued a confidential interim ruling finding that the European Union (EU) has violated WTO rules by subsidizing the manufacture of airplanes by Airbus. The process is far from finished. The EU is expected to appeal the ruling. A final ruling could be issued in 2010.

ISF REQUIREMENTS

Customs has published a [brochure](#) entitled “Importer Security Filing and Additional Requirements” that briefly summarizes ISF requirements.

BEAT IT

As part of its ongoing Intellectual Property Rights protection efforts, Customs recently [announced](#) the seizure of a shipment of counterfeit Michael Jackson belt buckles and a variety of items with Michael Jackson copyrighted images and text.

C-TPAT APPEALS

Customs has posted a [notice](#) on its website informing Customs-Trade Partnership Against Terrorism (C-TPAT) participants how to appeal a Customs decision that suspends or revokes participation in the program. The firm has successfully appealed C-TPAT decisions. Please contact Sean Murray with questions.

e-214s

Customs has again expressed concern regarding the low volume of e-214s filings. Only 35% of CF-214s filed in 2008 were e-214s. Of greatest concern to Customs is that the largest/busiest ports tend to have the lowest e-214 volumes by percentage of total. Customs is considering making the e-214 mandatory, but first wants to work with FTZs to get these numbers up and exhaust other options.

THE GENERRA PRESUMPTION

In [Peerless Clothing v. U.S.](#), the Court of International Trade (CIT) reminded that while under the [Generra](#) presumption the transaction value is presumed to include all payments between the buyer and seller, the presumption may be overcome by specific facts. CIT Slip Op. [09-86](#) (Aug. 13, 2009).

FORCED CHILD LABOR

The Department of Labor has issued a notice setting forth by country of origin an updated list of products which it preliminarily believes may have been produced by forced or indentured child labor. Comments are accepted until December 10, 2009. 74 Fed. Reg. [46794](#) (Sept. 11, 2009).

EPA EXPORT FINES

As a reminder of an often-overlooked Other Government Agency import and export requirement, the Environmental Protection Agency has announced a \$199,900 fine against a New Jersey company for exporting electronic waste (computer monitors) to Hong Kong in 2007 and 2008 without EPA notice or consent and for failing to timely respond to EPA requests for information.

GATS ON-LINE

The U.S. Department of Agriculture's Foreign Agriculture Service (USDA-FAS) division launched the Global Agricultural Trade System (GATS) [website](#), which combines U.S. and foreign trade data from Customs, Census, the United Nations, and the Global Trade Atlas (GTA). GATS also includes international agricultural, fish, forest and textile products trade statistics from 1989, when the Harmonized coding system was introduced to the U.S.

FIRST SALE NOTICE ENDS

The "first sale" reporting requirement ended on Aug. 19, 2009. The ITC will now prepare a report for the House Ways and Means Committee and the Senate Finance Committee, expected February 2010. CBP [Memorandum](#) to Directors, Field Operations (Aug. 26, 2009).

ATF/ACE INTERFACE

Showing how increased automation benefits regulators and not just importers, the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) has issued a [notice](#) regarding a plan to develop an interface with the Automated Commercial Environment (ACE) and International Trade Data System (ITDS). The interface will reduce approval times by allowing the trade to submit attachments with electronic import permit applications and release documents, but also give ATF investigators real-time access to import information for inspections and investigations.

RESIDUAL CHEMICALS

As reported in last month's Briefings, Customs issued a Final Rule on July 17, 2009, requiring importers to declare residual chemicals in "empty" containers. However, Port of Chicago Pipeline [09-024](#) (Sept. 11, 2009) indicates that Customs will delay enforcement to provide the trade community with time to comply. 43 Cust. B. & Dec. [32](#) (Aug. 6, 2009).

AES

The Postal Service has issued a Final Rule, effective November 2, 2009, revising its standards and customs label requirements to be consistent with [Census requirements](#) for the electronic filing of export information through the Automated Export System on goods mailed internationally. 74 Fed. Reg. [45760](#) (Sept. 4, 2009).

CUBA TRADE

The Bureau of Industry and Security (BIS) and Office of Foreign Assets Control (OFAC) have recently issued Final Rules easing restrictions on certain agricultural commodities, medicines and medical devices, travel-related transactions, and certain telecommunications transactions between the U.S. and Cuba. 74 Fed. Reg. [45985](#), [46000](#) (Sept. 8, 2009).

BUY AMERICA

The Environmental Protection Agency has revised its waiver of Buy American provision for water infrastructure projects under the Stimulus Bill to avoid difficulties in tracking minor incidental items such as nuts, bolts, and screws. 74 Fed. Reg. [39959](#) (August 10, 2009).

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 9/15/09		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	273	256
SUBZONES	645	540
PENDING		
ZONES		1
SUBZONES		20
MISCELLANEOUS		28
AVERAGE PROCESSING TIME (MONTHS)		
ZONES		8
SUBZONES		10