

# BRIEFINGS

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## BUY AMERICAN PENALTY

Direct Resource Inc. has [agreed](#) to pay \$450,000 to settle allegations that the company made false claims by selling Chinese origin products to the U.S. government in violation of the Trade Agreements Act (TAA). The TAA prohibits the sale of products to federal agencies where there is no reciprocal government procurement agreement. There is no such U.S. agreement with China. A whistleblower lawsuit triggered the investigation.

## IPR INTERIM RULE

Customs has instituted an Interim Rule allowing it to disclose information appearing on imported merchandise or its retail packaging to intellectual property rights (IPR) holders prior to seizure. This includes serial numbers, product codes, and stock keeping units (SKUs), which will help IPR holders assist Customs in identifying violations. Importers have 7 days from the date of detention to prove imports are not counterfeits before information is shared. Comments are due June 25, 2012. 77 Fed. Reg. [24375](#) (April 24, 2012).

## IRAN & SYRIA SANCTIONS

Further extending the scope of the U.S. sanctions on Iran and Syria, President Obama has issued Executive Order 13608, which allows the Office of Foreign Assets Control (OFAC) to impose sanctions on foreign entities that attempt to circumvent U.S. sanctions on Iran and Syria. It also suspends entry into the U.S. for persons involved in these transgressions. 77 Fed. Reg. [26409](#) (May 3, 2012).

## WEBINARS & eStore

- The firm will be presenting Webinars on various import/export/FTZ topics in future months. Please check our website for details.
- Also check the [eStore](#) for document packages, such as a summary of the FTZ Board's Annual Report and the firm's Reference Guide to FTZs.

## CENTERS OF EXCELLENCE

- Customs has [announced](#) plans to establish two new Centers of Excellence and Expertise (CEEs): Automotive and Aerospace in Detroit, and Petroleum, Natural Gas, and Minerals in Houston. They are in addition to the current CEEs for Electronics in Long Beach and Pharmaceuticals in New York.
- A new "Trade Intelligence" [pilot program](#) will assign a Private Sector Intelligence Liaison Officer (PSILO) to the Semiconductor and Pharmaceutical CEEs and another to the Customs Office of Trade Relations for tube and pipe issues. The PSILOs are to identify areas of "mutual interest" and provide Customs with intelligence, targeting, and enforcement information.
- Clients should understand that CEEs will provide Customs with enhanced information and expertise for enforcement activity.

## COLOMBIA FTA

- Intellectual property rights issues have been resolved, allowing the implementation of the FTA by the target date of May 15.
- Customs has issued instructions for the Colombia FTA systems requirements. CSMS [#12-000154](#) (April 30, 2012).

## NAFTZ SPRING UPDATE

- At the recent National Association of Foreign Trade Zones Seminar in Atlanta, Ms. Sonja Grant, Customs FTZ Program Officer, announced that Customs will be issuing a Memorandum to all Field Offices on the interim implementation of certain changes to the Customs FTZ regulations. These changes include: (1) the elimination of the Annual Blanket CBPF 216 for manipulation, manufacture, and exhibition, (2) Port Director discretion on the time requirement for CBPF 216s for destruction (i.e. individual, weekly, monthly, yearly), and (3) elimination of the 5-day Rule and the Nonprocessing Stipulation. Once these changes occur, every FTZ in the United States will need to change key processes.
- A second Memorandum is being issued on background investigations for key FTZ employees, directing that FTZ activations not be held up due to the processing of background investigations, a very important change we have long advocated.
- Contact Marshall Miller or Linda King for details. As soon as the Memoranda are issued, the firm will conduct an explanatory Webinar.

## FTZ BOARD REGULATIONS

Many of the new FTZ Board Regulations took effect on April 30. This includes a streamlined application process for production authority that makes it possible to secure approval as quickly as 60 days for suppliers and customers. This provides a new opportunity for existing zones to encourage suppliers and customers to get into the FTZ program.

## ACS vs. ACE

According to Cindy Allen, the Executive Director of the ACE Business Office, Customs will shut down the Automated Commercial System (ACS) next year if it is unable to obtain the necessary funding. Resources would be applied to the Automated Commercial Environment (ACE). The question now is at what point can ACS be turned off.

## C-TPAT/AEO

Customs and the European Union (EU) have [signed](#) a decision to mutually recognize the Customs-Trade Partnership Against Terrorism (C-TPAT) program and the EU's Authorized Economic Operator (AEO) program. It should save time and money for trusted partners of both programs. Mutual recognition is expected to begin July 1.

## UK TREATY ITAR EXEMPTION

The new U.S.-UK Defense Trade Cooperation Treaty entered into force on April 19, 2012. The license exemptions under the treaty are very complex and only apply to specific programs and technologies. Contact Chuck Ballard with questions. 77 Fed. Reg. [23538](#) (April 19, 2012).

## MISCELLANEOUS TARIFF BILL

Senator DeMint (R-SC) has expressed concern over moving forward with a Miscellaneous Tariff Bill under the current process and has been forming opposition to the process. However, Senate Finance Committee Democrats and House members are still trying to secure approval before the end of 2012.

## EPA e-TSCA REPORTING

The Environmental Protection Agency has issued a Proposed Rule that would require manufacturers and importers to report certain Section 4, 5, and 8 Toxic Substances Control Act information electronically. Comments are due June 18, 2012. 77 Fed. Reg. [22707](#) (April 17, 2012).

## WHISTLEBLOWER CASE

The U.S. Department of Justice has [intervened](#) in a whistleblower lawsuit against a Japanese manufacturing company and its U.S. subsidiaries. The suit alleges that the companies knowingly misrepresented the country of origin on documents presented to Customs to avoid paying antidumping and countervailing duties on imports of a colorant. The lawsuit was filed by a whistleblower under provisions of the False Claims Act. U.S. ex rel Dickson v. Toyo Ink Mfg. Co., Ltd., (W.D.N.C. 3:09-cv-438).

## "BUY AMERICAN" RULING

Customs has issued a country of origin ruling finding that certain flashlights are not eligible under "Buy American" requirements because the Indian-origin LED assemblies provide the essential character of the flashlights, and do not undergo a substantial transformation when assembled and programmed to perform various lighting functions in the United States. 77 Fed. Reg. [27788](#) (May 11, 2012).

## CUSTOMS PENALTIES

The Court of International Trade (CIT) has dismissed a 19 U.S.C. § 1592(a) negligence claim against an importer for alleged misclassification because Customs failed to allege negligence during the administrative penalty proceedings. U.S. v. Nitek Electronics, Inc., CIT Slip Op. [12-50](#) (April 13, 2012).

## USML CATEGORY V

The Directorate of Defense Trade Controls and the Bureau of Industry and Security have issued Proposed Rules on the transfer of some items relating to explosives from Category V on the U.S. Munitions List (USML) to Category 1 in the Commerce Control List (CCL). Comments to both agencies are due by June 18. 77 Fed. Reg. [25932](#) (May 2, 2012) and 77 Fed. Reg. [25944](#) (May 2, 2012).

## FTZ TAPES

The FTZ Board has opened a comment period for new evidence concerning the North American Tapes application for FTZ manufacturing authority. The public comment period ends on May 30, 2012. 77 Fed. Reg. [25400](#) (April 30, 2012).

## SYRIAN GENERAL LICENSE

OFAC has issued [General License \(GL\) 4A](#). GL 4A was issued following the issuance of E.O. 13606, which blocked the property of individuals for grave civil rights abuses. GL 4a clarifies that items authorized by Commerce Department license or otherwise are still authorized.

## EU FRAUDULENT GOODS

An [investigation](#) by the European Anti-Fraud Office (OLAF), EU Member States, and Indian and Taiwanese customs officers has identified a network of companies that were fraudulently importing Chinese tube and pipe fittings through several South East Asia countries to evade EU customs duties. The investigation has led to the recovery of 9 million euros in customs duties, as well as criminal proceedings in Germany and the UK.

## MYANMAR SANCTIONS

U.S. sanctions on Myanmar have been loosened with the issuance of the OFAC [General License \(GL\) 14-C](#). GL 14-C allows certain financial transactions in support of humanitarian, religious, and some other not-for-profit activities.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 5/15/12		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	277	260
SUBZONES	686	534
PENDING		
ZONES	7	
SUBZONES	16	
MISCELLANEOUS	53	
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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