

BRIEFINGS

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BROKER FRAUD

A Long Island customs broker has been [sentenced](#) to 2 years in prison for defrauding a client over several years. The client imported medical equipment that became duty-free in 1996, but the broker continued to charge for duties. In addition to the two year jail sentence, the broker was also ordered to pay approximately \$1.2 million in restitution. Clients are encouraged to carefully review entries and utilize limited Powers of Attorney.

PHARMA APPENDIX

The U.S. Trade Representative is requesting comments on additions to the HTSUS Pharmaceutical Appendix in preparation for WTO negotiations in late April 2010. Comments are due April 9. Clients with candidates for submission should contact Sean Murray with questions. 75 Fed. Reg. [11986](#) (March 12, 2010).

CENSUS FINAL RULE

The U.S. Census Bureau has issued a Final Rule requiring all exporters to use an Exporter Identification Number for Automated Export System (AES) declarations. Previously, individuals could use their Social Security Numbers, but as of March 24, this will no longer be possible. 75 Fed. Reg. [7546](#) (Feb. 22, 2010).

COMMERCE BUDGET

The U.S. Department of Commerce is requesting a 13% [budget](#) increase (almost \$10.5 million) for the Bureau of Industry and Security (BIS) to fund increased export enforcement.

2010 TRAINING SEMINARS

Details on the firm's 2010 seminar schedule are on our [website](#). There is still time to sign up for two upcoming advanced seminars

- April 13-14 – Advanced Export Seminar
- May 11-12 – Advanced Classification Seminar

Register by e-mail to [Penny Freeman](#).

EMCP

The BIS recently [published](#) a new 145 page booklet that outlines the nine elements of an effective Export Management and Compliance Program (EMCP). An EMCP is optional, but can be a mitigating factor if a violation occurs. The BIS EMCP guidance is still not robust enough to ensure compliance. Contact Sean Murray with questions about export compliance programs.

DDTC LICENSES

On March 4, the U.S. State Department's Directorate of Defense Trade Controls launched the full version of its MARY Status Retrieval System. The MARY system allows web-based access to users for export license status information separate from the DTrade2 interface. However, the most current and detailed case information remains on [DTrade2](#).

AGOA COMMENTS

Customs recently extended an existing African Growth and Opportunity Act (AGOA) Certificate of Origin information collection comment period until May 3, 2010. 75 Fed. Reg. [9423](#) (March 2, 2010).

BAE FINED \$400 MILLION

BAE Systems, PLC (BAE), the fourth largest U.S. defense contractor, has [agreed](#) to pay \$400 million to the Justice Department regarding violations of the Foreign Corrupt Practices Act. In addition to this U.S. fine, BAE will pay an additional £30 million to the United Kingdom's Serious Fraud Office. BAE's export licenses filed with the Directorate of Defense Trade Controls have all been placed on hold until the court determines the necessary action and possible additional penalties under the International Traffic in Arms Regulations.

OBAMA TRADE POLICY

- On March 11, 2010, President Obama issued [Executive Order](#) (EO) #13534 establishing the National Export Initiative (NEI). The NEI is tasked with improving export conditions for the private sector by removing trade barriers, providing financing, and advocating for small businesses. The EO also establishes an Export Promotion Cabinet made up of representatives from a number of federal agencies, including State, Treasury, U.S. Trade Representative, Agriculture, and Commerce to implement the NEI. 75 Fed. Reg. [12433](#) (March 16, 2010).
- The President's 2010 Trade Policy Agenda and 2009 Annual Report have been [released](#). 2010 goals include doubling exports in the next five years, pursuing the Trans-Pacific Partnership Free Trade Agreement, and addressing outstanding issues on pending FTAs with Panama, Colombia, and Korea.

FORWARDERS CHARGED

Reminding that restricted parties are not always obvious, three Miami freight forwarders have been [charged](#) with illegal exports of consumer electronics to the Galeria Page Mall in Paraguay - a Specially Designated Global Terrorist Entity by the Office of Foreign Asset Controls (OFAC). All entities within the mall are banned from receiving any U.S. goods without an OFAC license. The three defendants are accused of creating false invoices with false ultimate consignees on the Shipper's Export Declarations. The defendants may face up to 20 years in prison.

GSP ANNUAL REVIEW

The U.S. Trade Representative has published notice of its annual review of the Generalized System of Preferences (GSP) duty preference program Competitive Needs Limitations. Comments must be submitted by March 25, 2010. 75 Fed. Reg. [10339](#) (March 5, 2010).

SCHEDULE B SEARCH TOOL

Census recently [announced](#) a new search [tool](#) for finding Schedule B numbers. Users of the tool are reminded that they are still responsible for the accuracy of the classification and some harmonized classifications require reference to Explanatory Notes and other guidance for accuracy.

CPSC IMPORT SAFETY

The Consumer Product Safety Commission (CPSC) has issued a [press release](#) announcing that Daiso Holding USA Inc. and two related companies have entered into a consent decree requiring Daiso to pay a \$2 million civil penalty to resolve allegations involving the importing of toys with illegal levels of lead, lead paint, and phthalates, and the failure to label products with required warnings. The companies are also prohibited from importing, directly or indirectly, children's products until they demonstrate compliance with CPSC requirements.

CUSTOMS AND ITAR

To address compliance concerns, Miami and Chicago Customs have both released guidance on articles subject to State Department licenses. The Miami Bulletin focuses on DSP-61 temporary import licenses, while the Chicago Pipeline focuses on license submission, decrementing, and AES reporting. Miami Information Bulletin No. [10-015](#) (Feb. 12, 2010); Chicago Pipeline [10-08](#) (Feb. 24, 2010).

INTERNET COMMUNICATIONS

- The Office of Foreign Asset Controls (OFAC) has amended its regulations to permit the "export" of downloaded software and internet services to Iran, Sudan, and Cuba. This liberalization covers e-mail, instant messaging, and web browsing, provided the services and software are free to the user. 75 Fed. Reg. [10997](#) (March 10, 2010).
- The Export Administration Regulations (EAR) have long provided that transmitting information electronically out of the country is an export. However, a recent [advisory opinion](#) has indicated that free anonymous downloads of mass market software are not a violation of the EAR, even if downloaded by someone in Iran, Sudan, Cuba or other embargoed country. If information was collected for registration or other purposes, however, then the download is not anonymous and a license might be necessary.

ACE ABI FILERS

ACE is now open to all filers with the properly tested software, at all ports for filing entry summary types 01 (formal), 11 (informal), and 03 (AD/CVD). Any filer that is new to the Automated Broker Interface (ABI) will need to be tested in ACE. CSMS [#10-000053](#) (Feb. 23, 2010).

ECCN CHANGES

The BIS has made changes to two Export Control Classification Numbers (ECCN's), 1C360 and 1E998. 75 Fed. Reg. [7548](#) (Feb. 22, 2010).

LCD = VIDEO NOT COMPUTER

The U.S. Court of International Trade recently found that flat-panel LCD monitors commonly used with computers are classified instead as video monitors if they can receive signals from sources other than computers. Key to the decision were the Explanatory Notes to Heading 8471, which limit classification of "display units of automatic data processing machines" to monitors that "are capable of accepting a signal only from the central processing unit of an automatic data processing machine." [BenQ America Corp. v. U.S.](#), CIT Slip Op. 10-20 (March 1, 2010).

SUCCESSOR LIABILITY

As a reminder of the importance of including trade issues in mergers and acquisitions due diligence, Sirchie Acquisition Company (SAC) has agreed to pay a total of \$12.6 million in criminal and civil fines for violations by Sirchie Fingerprint Laboratories (SFL), a company it had acquired. SAC was found [liable](#) for the misdeeds of the former CEO, who repeatedly ignored a BIS Denial Order. None of the criminal conduct occurred after SAC acquired SFL. A portion of the fine, \$1.6 million, may be credited, if used for SAC's trade compliance program.

BEARINGS

Customs has [issued](#) a new Informed Compliance Publication (ICP) on the classification of ball and roller bearings, a frequent subject of classification errors and antidumping duties.

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 3/15/10		
	APPROVED	CURRENTLY AUTHORIZED
ZONES	273	256
SUBZONES	647	541
PENDING		
ZONES	2	
SUBZONES	31	
MISCELLANEOUS	31	
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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