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### 10 & 2 - Customs' Secure Freight Initiative – By Eric Jones – C-Air Brokers LA

Importers have most likely heard of “10 & 2” in trade publications but may not understand what their responsibilities to customs are or how to get started. This proposed change in the custom regulations will require information be transmitted to customs 24 hours prior to containers being loaded on board a vessel destined for the US.



“10 & 2” refers to ten fields of information importers must provide customs and two fields supplied by the carrier. By having this information prior to export customs is attempting to identify high risk shipments and improve the accuracy of cargo descriptions. Customs has designated importers as the responsible party to report the ten fields but the importer may authorize an agent to file on their behalf. Authorized agents must hold a customs bond to customs and a power of attorney by the importer.

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The ten fields of information that importers must provide are,

1. Manufacturer (or supplier) name and address
2. Seller name and address
3. Buyer name and address
4. Ship to name and address
5. Container stuffing location
6. Consolidator (stuffer name and address)
7. Importer of record number, tax identification or social security number
8. Consignee number
9. Country of origin
10. HTS number (to six digit level, not 10 digit as reported on customs entries.)

The remaining two fields are the vessel stow plans and status messages detailing the container movement. Carriers already provide this information to customs under manifest laws but it will now have to be transmitted to customs along with the ten points.

There are still several questions that need to be addressed by customs before the Secure Freight Initiative becomes law. Issues not decided yet include possible penalty actions for missing or inaccurate transmissions, bonding companies added risks, and definitions when actual manufacturers and/or “ship to” names are not available at time of export.



During this time period while customs works toward a final draft of the new initiative, importers should begin looking within their own supply chain as to who has the required information and is best able to transmit. A good beginning point would be to make sure that imported merchandise is pre-classified and the tariff number appears on the commercial invoice. Special attention should also address gathering all information in advance of surrendering cargo to a carrier. Since this information must be electronically filed 24 hours prior to loading cargo onto a shipping vessel, importers should prepare for possible delays in export of merchandise.

C-Air has verified that our hardware will be able to receive data from overseas and transmit to customs. Our customs software vendors are already in contact with their US customs representatives to program what is necessary to transmit once a final version is made available. We will also continue to provide information about this major change in importing procedures as they become available and help answer questions pertaining to your import operations.

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### **FMC Action Could Delay Implementation of L.A./Long Beach Clean Trucks Program** – by Sandler Travis & Rosenberg, P.A.

A recent request for information from the Federal Maritime Commission could delay implementation of the Clean Trucks Program at the ports of Los Angeles and Long Beach. The CTP, which is designed to modernize the trucking fleets at the neighboring ports in an effort to reduce related air pollution, provides for the gradual phase-out of older trucks that move cargo into and out of the ports.



The first phase of the CTP is slated to take effect Oct. 1, when all model year 1988 or older trucks will be prohibited, but press reports say the FMC's request could push that date back. A *Shippers' NewsWire* article reports that the FMC has requested information regarding a proposed "antitrust agreement that the ports require to begin working with terminal operators" to implement the CTP. That agreement will take effect 45 days after the information is submitted, the

article states, unless the FMC asks for more information or seeks an injunction. The ports will then have to finalize and plan for implementation of the plan, the article concludes, which could take six months or more. It is unclear at this point whether the imposition of the related \$35 per 20-foot equivalent unit fee, which is scheduled to begin June 1, will be delayed as well.

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### **Consumer Product Safety Commission Announces Record Penalty Against Reebok** – By David J. Evan, Esq. – Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP

The Consumer Product Safety Commission ("CPSC") recently announced the issuance of a civil penalty in the amount of \$1,000,000 against Reebok International Ltd. for alleged violation of the Federal Hazardous Substances Act ("FHSA"). The CPSC alleged that Reebok imported and distributed charm bracelets that contained toxic levels of lead. This is the largest penalty assessed by the CPSC for violation of the FHSA.

This action by the CPSC highlights the need for importers and distributors of children's products to conduct internal product reviews to ensure compliance with the various CPSC and state laws. Notably, it was recently announced that the CPSC will be adding staff at U.S. Ports to target high risk merchandise and stop non-compliant products before they can be distributed. Given the increased scrutiny of consumer safety issues as well as pending federal legislations which would further strengthen the Government's enforcement of consumer products, internal product reviews are becoming critical to minimize penalty exposure and should be conducted prior to importation whenever possible.

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### **Coast Guard Announces Conditions of Entry for Vessels Calling in Iran –**

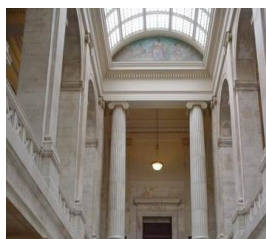
*Published by Sandler Travis & Rosenberg P.A.*



Liberia, Mauritania and Syria.

The Coast Guard has announced that as of April 2 it will impose certain conditions of entry on vessels that visited ports in Iran during their last five port calls. This action follows the Coast Guard's determination that ports in Iran are not maintaining effective anti-terrorism measures. Iran will join the following countries on the list of those for which such a determination has been made: Cameroon, Equatorial Guinea, Guinea-Bissau, Indonesia,

*OTEXA Vietnam Textile and Apparel Monitoring Home Page, at <http://ia.ita.doc.gov/download/vietnam-textile-monitoring/vtm-index.html> (see 'Monitored Import Data' for January 2008 data.)*



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### **CBP Announces Priority Trade Issues for 2008 – by Sandler Travis & Rosenberg P.A.**

U.S. Customs and Border Protection recently posted to its Web site documents indicating that it has established the following priority trade issues for 2008.

**AD/CV Duties.** CBP states that its ability to fulfill its statutory responsibility to collect all revenue due the U.S. government has been affected by (a) the retrospective nature of the antidumping/countervailing duty system, which requires CBP to issue bills one to two years after an entry has occurred to importers who may be unwilling, unable or simply have no intention of paying an increase in duties, and (b) companies who willfully circumvent AD/CV duties through illegal transshipment, undervaluation or misclassification of merchandise. CBP has therefore elevated the AD/CV program to PTI status to ensure that a concerted, systematic approach is implemented to facilitate legitimate trade, detect and deter circumvention of AD/CV duties and timely liquidate transactions with correct determinations regarding final duties owed. CBP will utilize a risk-based approach to identify and address violations and circumvention schemes and will promote the use of traditional as well as innovative mechanisms to address noncompliance and revenue collection issues.

**Penalties.** The goal of CBP’s penalties trade strategy is to improve the effectiveness of the trade fraud penalty process by (a) emphasizing national direction, uniformity and swift action, (b) applying trade compliance alternatives to traditional commercial fraud penalties and (c) focusing trade fraud resources on PTIs. For the purposes of this strategy, trade fraud is defined as any entry or importation by way of false acts, information or omissions, including in entry documentation. The trade fraud penalty process is a PTI because considerable CBP resources are expended to achieve modest penalty collections and penalties are often the only tool available to CBP to deter noncompliance in the trade environment.

The sanctions philosophy of this trade strategy is to assess penalties strictly according to headquarters instructions and to mitigate strictly within existing mitigation guidelines for cases involving PTIs. These cases are considered more critical than non-PTI cases for mitigation purposes, and deciding officials are encouraged to impose mitigated amounts that are at the high end of the mitigation ranges.

**Textiles.** Due to the high-risk nature of imports of textile and apparel products, CBP has designated this industry as a PTI for 2008. Many different schemes are used to evade duties or quotas on imports of such goods. Some importers engage in transshipment while others use false documents or labels or provide incorrect descriptions of the merchandise. In recent textile enforcement operations over \$12 million in misdescribed goods have been seized. CBP has also identified significant intellectual property rights violations involving textile products and seized approximately \$27 million in infringing goods in 2007.

CBP uses a multifaceted approach consisting of trade pattern analysis, on-site verification, review of production records, audits and laboratory analysis to enforce U.S. trade laws and ensure that the appropriate revenue is collected. To conduct on-site verifications, CBP’s Textile Production Verification Teams travel to foreign factories to review and verify that wearing apparel that is shipped to the U.S. is produced at those facilities. These “jump teams” visited 15 countries and approximately 671 factories in FY 2007, a 57 percent increase over the previous year.

Import specialists with specialized commodity knowledge analyze and review textile imports for possible violations. Focusing on textile violations has paid off with seizures of major shipments. CBP has seized more than \$100 million in goods since the beginning of 2006 and close to \$50 million in 2007 for violations of the China quota agreement. In addition, CBP issued 68 penalty actions valued at \$50.1 million. More than 13,000 physical examinations were performed, 1,527 fiber samples were analyzed by CBP labs and 66 audits were conducted.

**Import Safety.** CBP will focus on protecting the public health and safety from unsafe importations through more refined risk analysis, further developments in the Automated Commercial Environment, enhanced targeting and tracking, improved interagency and intra-agency communication and coordination, and continued partnerships with the trade community.

**Agriculture.** CBP’s agriculture trade strategy is designed to detect and prevent agro-terrorism and bio-terrorism; i.e., the intentional contamination of agricultural products or foods or the intentional introduction of diseases or pests intended to cause harm to the American public, American agriculture or the U.S. economy. This will include the risk assessment and prevention of biological, chemical and radiological methods of contaminating the food supply or agricultural products. This strategy also recognizes the more traditional mission of protecting the food supply from the unintentional introduction

of (a) harmful plant and animal pests and diseases and (b) adulterated, contaminated or unsafe agricultural and food products.

**Revenue.** Primarily in response to an independent auditor’s review of CBP’s internal controls over financial reporting done in FY 2002, revenue became a PTI. The auditor’s report stated that CBP did not adequately monitor the effectiveness of its internal controls over entry duties and taxes. In today’s environment of management accountability and reliance upon internal controls, CBP must take a proactive approach in determining areas that pose a material risk in its revenue process and ensuring that its internal operations and controls are designed to mitigate the risks at the point in the entry process where they occur.

(IPR is reportedly a PTI for 2008 as well, but no information on this topic has been posted on CBP’s Web site.)

- a capital letter “E” printed within a circle to be clearly and conspicuously disclosed in color-contrasting ink on the label of metal halide lamp fixture packages and the ballasts contained in those fixtures to indicate that they meet applicable DOE energy efficiency standards;
- retail catalog sellers to include the capital letter “E” printed within a circle in their descriptions of metal halide lamp fixtures;
- disclosures in point of sale promotional material; and
- annual reports on metal halide lamp fixtures in current production that include information such as trade names, model numbers, voltage and ballast efficiency.



### **FDA Issues Guidance for Industry on Food Labeling**

– by Broker Power, Inc.

The Food and Drug Administration has issued an April 2008 guidance for industry, which summarizes the required statements that must appear on food labels under federal laws governing food products under FDA's jurisdiction and their regulations.

(The FDA states that this guidance supersedes the previous version issued in September 1994.)

### **Guidance Offers Compliance Information on Various Food Labeling Topics**

The Nutrition Labeling and Education Act (NLEA), which amended the Federal Food, Drug, and Cosmetic Act, requires most foods to bear nutrition labeling and requires food labels that bear nutrient content claims and certain health messages to comply with specific requirements. To help minimize legal action and delays, FDA recommends that manufacturers and importers become fully informed about the applicable laws and regulations before offering foods for distribution in the U.S.

The most frequently raised questions on labeling requirements have been addressed in FDA's guidance using a "question and answer" format and are grouped by the food labeling area of interest, including the following topics (*partial list*):

- General Food Labeling Requirements
- Name of Food
- Juices
- Net Quantity of Contents Statements
- Ingredient Lists
- Colors
- Food Allergen Labeling
- Nutrition Labeling
- Nutrient Declaration
- Products with Separately Packaged Ingredients/Assortments of Foods
- Trans Fat Labeling
- Serving Size
- Exemptions/Special Labeling Provisions
- Health Claims
- Qualified Health Claims

(The FDA notes that this guidance represents its current approach to food labeling, and does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The trade may use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations.)

*FDA contact information – Office of Nutritional Products, Labeling, (301) 436-2371  
and Dietary Supplements*

*Guidance for Industry: A Food Labeling Guide (dated April 2008) available at  
<http://www.cfsan.fda.gov/~dms/2lg-toc.html#ftn1>*



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