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## Bush Administration Sets Deadline for Finalizing Regulatory Actions

– by Sandler Travis & Rosenberg PA

The White House has set a Nov. 1 deadline for federal agencies to finalize pending regulatory actions. This step could have the effect of delaying the implementation of some trade-related regulations.

In what some observers said was a “highly unusual” memo issued May 9, White House Chief of Staff Josh Bolten told the heads of executive departments and agencies that, except in extraordinary circumstances, regulations to be finalized before the Bush administration leaves office next Jan. 20 should be proposed no later than June 1 and finalized no later than Nov. 1. Bolten said this timeframe is being imposed to prevent “the historical tendency of administrations to increase regulatory activity in their final months.” The memo did not define what might constitute “extraordinary circumstances,” but it did say that the Office of Management and Budget will coordinate an effort to complete administration priorities while providing for an appropriately open and transparent process and controlling regulatory costs. The memo also notes that the head of the OMB’s Office of Information and Regulatory Affairs will report to Bolten on a regular basis regarding agency compliance. One former OMB official was quoted in *International Trade Daily* as saying that this measure “gives a presidential blessing to the whole process that agencies will be sure to notice.”

The deadlines imposed by the memo could affect a number of trade-related regulations. For example, the following proposed rules (which were listed as forthcoming in the most recent listing of federal regulatory agendas in the *Federal Register*; see the May 5 issue of WTI for more information) were apparently not issued by June 1, indicating that further action could be delayed until next year.

- USDA – ensuring that cattle and captive bison infected with tuberculosis are not imported into the U.S.
- USDA – tightening the TB testing requirements for steers and spayed heifers with more than three inches of horn growth that are entering the U.S. from Mexico

### INSIDE THIS ISSUE

#### PAGE

- 1 Bush Administration Sets Deadline for Finalizing Regulatory Actions
- 3 Update on CBP's Draft Transaction Sets for the Proposed 10 + 2 Security Filing
- 4 Court Finds Importer Liable for Penalties for Not Exercising Reasonable Care
- 4 CBP Posts May 2008 Statistics on Bond Rejections
- 5 USTR Advisory Committee to Review Impact of C-TPAT on Small Businesses
- 6 CBP Revises ICP on Hats and Other Headgear
- 7 CITA Makes DR-CAFTA Short Supply Determinations on Cotton Fabrics
- 7 CBP in California Seized \$4.8 Million Worth of Fake Items in May

- USDA – establishing a new category of nursery stock whose importation is not authorized pending risk assessment



- FDA – requiring imported food that is refused entry into the U.S. to be labeled “UNITED STATES: REFUSED ENTRY” by its owners or consignees

The regulatory agendas also indicated that following interim, interim final or final rules are expected to be issued before the Nov. 1 deadline; as a result, no delay in their implementation is anticipated. In addition, these rules will likely take effect before the next administration takes office, decreasing the chances that they could be overturned after that time.



- USDA – mandatory country of origin labeling of beef, pork, lamb, fish, perishable agricultural commodities and peanuts

- USDA – requiring phytosanitary certificates to accompany all non-commercial shipments of fruits and vegetables imported by air passengers

- USDA – eliminating (a) the exemptions from inspection for imported fruits and vegetables grown in Canada and (b) the exemptions from user fees for commercial vessels, trucks, railroad cars and aircraft (and international air passengers) entering the U.S. from Canada

- USDA – increasing the user fees charged for export certification of plants and plant products



- USDA – prohibiting or restricting the importation of birds, poultry and bird and poultry products from regions that have reported the presence in commercial birds or poultry of highly pathogenic avian influenza other than subtype H5N1

- USDA – restricting the importation of live fish that are susceptible to viral hemorrhagic septicemia

- CBP – final “10+2” rule requiring additional data elements from importers and ocean carriers before oceanborne cargo is brought into the U.S.

- TSA – establishing the Certified Cargo Screening Program, which will certify shippers, manufacturers and other entities to screen air cargo intended for transport on passenger aircraft



- DOT – making intermodal equipment providers subject to the Federal Motor Carrier Safety Regulations for the first time in order to ensure that intermodal container chassis and trailers tendered to motor carriers by steamship lines, railroads, terminal operators, chassis pools, etc., are safe and systematically maintained



## **Update on CBP's Draft Transaction Sets for the Proposed 10 + 2 Security Filing** – by Broker Power Inc.

U.S. Customs and Border Protection recently posted to its Web site draft transaction sets providing the records and other information that will allow the Importer Security Filing (SF) data elements to be transmitted to CBP.

**COAC Had Asked for These Drafts** - According to trade sources, the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) had requested these drafts, in order to allow the trade to prepare for the information technology (i.e., programming) aspects of the Importer SF (ISF).

(In January 2008, CBP proposed requiring SF information from importers and additional information from carriers (10+2) for vessel (maritime) cargo before it is brought into the U.S. For the ISF, 10 data elements (ISF-10) are proposed for shipments other than those consisting entirely of FROB, IE or T&E goods, and 5 data elements (ISF-5) are proposed for shipments consisting entirely of FROB, IE, or T&E.<sup>1</sup>)

**Draft ISF CATAIR and CAMIR Chapters** - CBP has posted two draft chapters exclusively devoted to the ISF-10 and ISF-5 transaction sets. One of these chapters is for the Customs and Trade Automated Interface Requirements (CATAIR) and the other is for the Customs Automated Manifest Interface Requirements - Intermodal (CAMIR - Intermodal). The information in both chapters appears to be largely the same.

**Drafts of Existing CATAIR and CAMIR Chapters, Appendices** - Drafts of six existing CATAIR and CAMIR chapters and appendices that have been amended for the ISF-10 and/or ISF-5 transaction sets have also been posted.

**Draft of Existing X12 Message Set** - CBP has also posted a draft of an existing X12 message set (309) which has been amended to include ISF-5 transaction set.

**Drafts are Subject to Change Without Notice** - CBP notes that the ISF technical requirements are in draft form and are subject to change without notice.

**Technical Comments May be Submitted on Drafts** - CBP states that comments on these drafts, of a technical nature only, are being accepted at [Security\\_Filing\\_Technical@cbp.dhs.gov](mailto:Security_Filing_Technical@cbp.dhs.gov).

CBP further states that it reserves the right to provide answers to technical issues or questions at its discretion by way of a FAQ, through individual communications, or defer answering until publication of the final rule.

<sup>1</sup>Foreign cargo remaining on board (FROB), immediate exportation (IE), and transportation and exportation (T&E). Note the ISF-5 data elements are not a subset of the ISF-10 data elements (but they have two data elements in common).

*(See ITT's Online Archives or 06/02/08 news, (Ref: [008060205](#)), for initial BP summary on the posting of these technical requirements.*

See ITT's Online Archives or 01/17/08 news, (Ref: [08011710](#)), for the final part of BP's summary of the 10+2 proposed rule, with links to previous parts.)

SF Draft Transaction Sets available at

[http://www.cbp.gov/xp/cgov/trade/automated/automated\\_systems/sf\\_transaction\\_sets/](http://www.cbp.gov/xp/cgov/trade/automated/automated_systems/sf_transaction_sets/).



## Court Finds Importer Liable for Penalties for Not Exercising Reasonable Care – by Sandler Travis & Rosenberg PA

In a June 9 decision, the Court of International Trade ruled that an importer of certain liquid crystal display glass panels is liable for civil penalties under 19 USC 1592(c) because it did not exercise reasonable care with respect to their classification. The company's counsel had advised it to seek a binding classification ruling from U.S. Customs and Border Protection in light of a court decision classifying other types of LCD glass panels under HTSUS 9013.80.70. No such request was made, however, and the company continued to classify its

goods under HTSUS 8531, which carries a lower duty rate.

In determining whether reasonable care was exercised, the CIT said it was particularly influenced by the company's failure to act in accordance with the well-informed advice of its attorneys. The court pointed out that the company's counsel was its "only source of credible advice regarding the classification of LCDs" because the company did not rely on its customs broker for classification advice and apparently had no employees of its own who were sufficiently knowledgeable to determine proper classification. "While the act of consulting with an attorney, in itself, does not establish reasonable care under these circumstances," the court said, "surely after receiving the formal advice of its attorneys [the company] was under an obligation to actively pursue the issues raised, which it failed to do." According to the court, the continued misclassification that resulted constitutes negligence.

The court awarded CBP \$913,572.79 in lost tariff revenue. The court also assessed a civil penalty of about \$1.4 million, which reflects aggravating factors such as the lack of a good faith effort to comply and the economic benefit gained from the violation as well as a partial mitigation for the defendant's otherwise clean record.

## CBP Posts May 2008 Statistics on Bond Rejections – By Broker Power Inc.

U.S. Customs and Border Protection has posted an Excel spreadsheet listing the reject reasons for May 2008 for CBP Form 5106 Importer ID input records, CBP Form 301 Customs bonds, bond riders, bond terminations, etc.

**Top Five Rejection Reasons** - The top five rejection reasons, along with the number of rejections, for May 2008 were:

No. of Rejects	Reject Reason
137	CBP Form 5106 Importer ID Input Record IR05 - Incorrect
127	CBP Form 301 Customs Bond B10 – Effective Date
68	CBP Form 5106 Importer ID Input Record IR02 – Missing CBP 5106
65	Bond Rider R04 - Incorrect
50	Bond Termination T14 – Bond Number

(Though the number of rejects for each reason was lower in May than in April, the top reasons for rejects were mostly the same. See ITT's Online Archives or 05/22/08 news, (Ref: [08052210](#)), for BP summary of April bond reject statistics.)

### Reasons for Bond Rejections

The types of problems detailed in the document include (*partial list*):

- effective date
- title of signer
- surety agent
- point of contact information missing
- 3 digit broker code
- importer number(s)
- bond amount
- execution date

(See ITT's Online Archives or 05/22/08 news, (Ref: [08052205](#)), for BP summary of the bond-related issues discussed at the May 2008 COAC meeting, including CBP's development of a database of bond errors.)

Rejects for the Month of May 2008 (posted 06/03/08) available at

[http://www.cbp.gov/linkhandler/cgov/trade/priority\\_trade/revenue/bonds/pilot\\_program/bond\\_reject\\_stats.ctt/bond\\_reject\\_stats.xls](http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/revenue/bonds/pilot_program/bond_reject_stats.ctt/bond_reject_stats.xls).



### USTR Advisory Committee to Review Impact of C-TPAT on Small Businesses – Terre Meth, Director of

Sales - C-Air Brokers and Forwarders, Inc.

The Office of the U.S. Trade Representative's Industry Trade Advisory Committee on Small and Minority Business will hold a partially open meeting June 9 in Orlando, Fla. The open portion of this meeting will include discussion of the following.

- how the Customs-Trade Partnership Against Terrorism impacts small business
- Export opportunities in free trade agreement areas
- Asia-Pacific Economic Cooperation forum ministerial meeting on small and medium-sized enterprises
- America's Competitiveness Forum
- Patent reform legislation



## **CBP Revises ICP on Hats and Other Headgear** – *Sandler Travis & Rosenberg PA*



U.S. Customs and Border Protection has posted a June 2008 revised version of its Informed Compliance Publication “Classification of Hats and Other Headgear (under HTSUS Heading 6505)” as part of its series “What Every Member of the Trade Community Should Know About.”

This publication was prepared by the National Commodity Specialist Division of Regulations and Rulings in order to provide guidance to the trade community. It was first published in March 1999, and was then revised in January 2004 and May 2005. It was reviewed with no changes in June 2006, and has now been revised in June 2008.

### **ICP Revised for "Baseball-Style" Caps with Ornamental Braid**



According to CBP sources, this ICP is different in only one respect from its prior (2006) version. It has been revised to reflect CBP's 2005 final interpretive rule on man-made fiber (MMF) baseball style caps with ornamental braid.

(Under the final interpretive rule, ornamental braid on a baseball-style cap, located between peak and crown in a width of 1/8 of an inch or greater, will render the cap classifiable in the HTS as “wholly or in part of braid.” Conversely, such braid in a width of less than 1/8 of an inch will result in a cap being classifiable in the HTS as “not in part of braid.”)

### **Classification of Hats and Other Headgear under HTS 6505**

HTS 6505 includes two six-digit HTS subheadings: hair-nets (HTS 6505.10) and other headgear (HTS 6505.90), the later of which is divided by component material and construction (knit, not knit, etc.) into eight-digit subheadings:

- of cotton, flax, or both (HTS 6505.90.15 through 6505.90.25)
- of wool (HTS 6505.90.30 through 6505.90.40)
- of MMF (HTS 6505.90.50 through 6505.90.80), and
- of other (HTS 6505.90.90).



CBP notes that importers and brokers commonly enter HTS 6505 products under incorrect eight-digit subheadings based on the wrong material or wrong construction.

CBP also notes, among other things, that:

- Visors and other headgear which do not cover the crown of the head must be accurately described as there are separate statistical breakouts for this type of merchandise.
- Statistical breakouts for babies' hats and headgear are provided and such items must be sized 0 to 24 months (toddler sizes do not fall under these numbers).
- Woven cotton hats are often incorrectly classified under the HTS 6505.90.2590 provision for woven flax headgear (cat 859). However, woven cotton hats are properly classified as other cotton woven headgear under HTS 6505.90.2060 (cat 359) which pertains to both cotton woven certified hand-loomed and folklore products and woven headgear of cotton (other than for babies).
- Many items have been determined to be hats and headgear of HTS 6505 rather than festive articles of HTS 9505.

*(See ITT's Online Archives or 06/12/06 news, (Ref: [06061220](#)), for BP summary of 2006 ICP. See ITT's Online Archives or 04/04/05 news, (Ref: [05040430](#)), for BP summary of CBP's final interpretive rule on baseball-style caps with ornamental braids.)*

*CBP's 2008 ICP available at*

[http://www.cbp.gov/linkhandler/cgov/trade/legal/informed\\_compliance\\_pubs/icp034.ctt/icp034.pdf](http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp034.ctt/icp034.pdf)



### **CITA Makes DR-CAFTA Short Supply Determinations on Cotton Fabrics** - by *Sandler Travis & Rosenberg PA*

The Committee for the Implementation of Textile Agreements has determined under the DR-CAFTA that certain cotton indigo-dyed fabrics are not available in commercial quantities in a timely manner in the DR-CAFTA region. These 100 percent combed cotton fabrics are woven with a dobby attachment and piece dyed with synthetic indigo and are classified under HTSUS 5208.39.6090 and 5208.39.8090. Effective June 11 these fabrics will be added to the short supply list in DR-CAFTA Annex 3.25 in unrestricted quantities.



### **CBP in California Seized \$4.8 Million Worth of Fake Items in May** -

*USCBP* - (Monday, June 09, 2008) - [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/06092008\\_4.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/06092008_4.xml)

**Los Angeles** — U.S. Customs and Border Protection officers at Los Angeles and Long Beach seaports seized over \$4.8 million worth of counterfeit merchandise in the month of May. The items included handbags, shoes, toys, DVD movies, sunglasses, wearing apparel and many other fake goods. Phony athletic footwear was the number one item last month with an estimated domestic value of over \$2.2 million.

CBP officers and import specialists are aggressively working together to intercept shipments containing counterfeit and pirated items. "CBP is charged with enforcing trade laws and we continue to devote substantial resources to target, intercept, detain, seize and forfeit shipments of goods that violate these laws," said Kevin W. Weeks, CBP director of Field Operations, Los Angeles.

As CBP develops more innovative methods to identify high-risk shipments, the smugglers also develop new schemes. Many of these shipments were shipped by unknown importers, manifested as other products or hidden in between legitimate goods. "We will continue to develop new approaches to combat intellectual property rights violators," added Weeks. Importation of counterfeit commodities is illegal and importers may face civil penalties and criminal charges.

Once federal forfeiture procedures are completed, seized items are either donated to charity, with the trademark owner's approval, or destroyed. In the past, CBP has donated thousands of pairs of shoes and clothing to charitable organizations or to relief efforts. Products that threaten the health and safety of American consumers are destroyed.

*U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of our nation's borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws.*

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