

KEY REGULATORY CHANGES IN 2008

The Year In Review

Panel Moderator - Sandra L. Bell,
Executive Director, Regulations and
Rulings
Office of International Trade



KEY REGULATORY CHANGES *IN TRADE*

- Free Trade Agreements
- Softwood Lumber
- First Sale (Valuation)
- Haiti HOPE I and II
- Uniform Rules of Origin



Free Trade Agreements

- Regulations implementing the U.S.-Jordan FTA were published in the Federal Register as an interim rule on June 27, 2007 (72 FR 35154), and as a final rule on March 31, 2008 (73 FR 16752).
- Regulations implementing the U.S.-Morocco FTA were published in the Federal Register as an interim rule on June 29, 2007 (72 FR 35647), and as a final rule on August 5, 2008 (73 FR 45351).



Free Trade Agreements cont...

- Regulations implementing the U.S.-Bahrain FTA were published in the Federal Register as an interim rule on October 16, 2007 (72 FR 58511), and as a final rule on July 23, 2008 (73 FR 42679).
- Regulations implementing the Dominican Republic-Central America-United States Free Trade Agreement were published in the Federal Register as an interim rule on June 13, 2008 (73 FR 33673). The comment period closed on August 12, 2008; the final rule is being prepared.



Softwood Lumber

- **From Canada:** On April 17, 2008, CBP published in the **Federal Register** (CBP Dec. 08-10; 73 FR 20782) a final rule that adopted with some changes interim amendments to the CBP regulations (published on October 18, 2006; CBP Dec. 06-25; 71 FR 61399)) that prescribe special entry requirements for purposes of monitoring and enforcing the Softwood Lumber Agreement between the Governments of Canada and the U.S. The final rule was effective on April 17, 2008.



Softwood Lumber continued...

- From any country: An interim rule prescribing special entry requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the U.S. was published in the **Federal Register** on August 25, 2008 (73 FR 49934). This interim rule was required pursuant to the Softwood Lumber Act of 2008 (part of the Food, Conservation, and Energy Act of 2008, commonly referred to as the Farm Bill), and became effective on September 18, 2008.



First Sale (Valuation)

- On January 24, 2008, a proposed new interpretation of the phrase “sold for exportation to the United States” for purposes of determining the “price actually paid or payable” under the transaction value method of valuation was published in the **Federal Register** (73 FR 7315). Under this proposal, in transactions involving a series of sales, transaction value would normally be determined on the basis of the price paid by the buyer in the U.S. rather than the price paid in the first (or earlier) sale.



First Sale (Valuation) cont...

- On August 25, 2008, an interim rule was published in the **Federal Register** (73 FR 49939) that establishes the method by which importers at the time of entry summary must notify CBP if the declared transaction value of their imported merchandise is determined on the basis of a first sale. This was required pursuant to section 15422(a) of the Farm Bill.
- The interim rule was effective on August 20, 2008; however, by directive, CBP has delayed enforcement of the first sale declaration requirement for 30 days until September 20, 2008. In this Interim rule, CBP stated that it was withdrawing the January 24, 2008 notice of proposed interpretation.



Haiti HOPE I and II

- On June 22, 2007, CBP published in the **Federal Register** (72 FR 34365) an interim rule implementing the duty-free provisions relating to textile and apparel articles from Haiti set forth in the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE I) Act of 2006.
- On September 30, 2008, a Final Rule was published which implemented both the provisions of the 2006 Act as well as the changes required under Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE II) Act of 2008 (part of the Farm Bill).



Uniform Rules of Origin for Imported Merchandise

- By a notice of proposed rulemaking published in the **Federal Register** on July 25, 2008 (73 FR 43385), CBP proposed to establish uniform rules governing CBP determinations of the country of origin of imported merchandise.
- *This proposal would extend application of the country of origin rules (including the substantial transformation standard) codified in part 102 of the CBP regulations to all country of origin determinations made under the customs and related laws and the navigation laws of the United States, unless otherwise specified.*



Uniform Rules of Origin for Imported Merchandise Continued...

- Comments to the proposal were due on September 23, 2008. The comment period was initially extended until October 23, 2008. Based on a notice published in the Federal Register on October 30, 2008, comments may be submitted until December 1, 2008.





Myles Harmon

Director, Commercial & Trade Facilitation
Division, Regulations and Rulings



KEY REGULATORY CHANGES *IN TRAVELER SECURITY AND FACILITATION*

- Western Hemisphere Traveler Initiative
- Private Aircraft (*E-APIS*)
- Global Entry
- ESTA (*Electronic System for Travel Authorization*)



Western Hemisphere Travel Initiative (WHTI)

- This final rule issued on April 3, 2008– completes the plan to implement section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended (IRTPA), to require:
 - U.S. citizens and nonimmigrant citizens of Canada, Mexico, and Bermuda to comply with the *new documentation requirements* for entering the United States from within the Western Hemisphere at sea and land ports-of-entry.



Western Hemisphere Travel Initiative (WHTI) continued...

- On and after the June 1, 2009, travelers to and from the United States, Canada, Mexico, the Caribbean, and the British Overseas Territory of Bermuda are required to have a valid passport or other accepted document that establishes the bearer's identity and citizenship to enter or re-enter the United States.
- Until then, effective as of January 31, 2008, *all persons subject to the regulations must submit substitute documentation to establish their identity and citizenship to the satisfaction of a CBP officer.*
- *Verbal declarations of citizenship are no longer accepted.*



Private Aircraft (General Aviation)

- Proposed rule published on February 11, 2008.
- Final Rule *under consideration at OMB for clearance:*
- Will require private aircraft pilots or their designees arriving in the United States from a foreign port or location destined for a U.S. port or location, or departing the United States *to a foreign port or location:*
 - a. *to provide additional data elements when submitting a notice of arrival and requires private aircraft pilots or their designees to submit a notice of departure, and*
 - b. *to transmit electronically to CBP passenger manifest information for each individual traveling onboard the aircraft.*

*through an approved electronic data interchange system in the same transmission as the corresponding arrival or departure passenger manifest information no later than 60 minutes before an arriving private aircraft departs from a foreign location destined for the United States **and** no later than 60 minutes before a private aircraft departs a U.S. airport or location for a foreign port or place.*



Global Entry

- This General Notice, published on April 11, 2008 (73 FR 19861), announced a pilot *international registered traveler program*, later renamed and referred to as “**Global Entry**,” that allows for the expedited clearance of pre-approved low-risk air travelers into the United States.
- Initially, implemented on June 10, 2008, at three airports: John F. Kennedy International Airport , New York; the George Bush Intercontinental Airport, Houston, and the Washington Dulles International Airport.



Global Entry continued...

- Recently expanded to include Los Angeles International Airport, (LAX); Hartsfield-Jackson Atlanta International Airport (ATL); Chicago O'Hare International Airport (ORD); and Miami International Airport (MIA). (73 FR 30416, May 27, 2008).
- Implementation dates at the additional airports and JFK terminals *will be announced in the CBP Web site.*



Global Entry continued...

Overview

- The Global Entry pilot project allows
 - expedited entry into the United States at any of its participating locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each airport.
 - uses fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant. Global Entry participants may bypass the regular passport control primary inspection lines.

- For now, only U.S. citizens, U.S. nationals, and U.S. lawful permanent residents (LPRs) are considered for participation (at the launch of this pilot).



Electronic System for Travel Authorization (ESTA)

- Interim final rule published in the Federal Register on June 9, 2008 to implement the Electronic System for Travel Authorization (ESTA) requirements *under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007*, for aliens who wish to enter the United States under the *Visa Waiver Program (VWP) at air or sea ports of entry*.
- ESTA (which replaces the current Form I-94W) will provide for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry.



Electronic System for Travel Authorization (ESTA) Continued...

- Although the interim final rule became effective on August 8, 2008, an additional Federal Register notice will be published to announce the date on which ESTA becomes mandatory *for all VWP travelers (now slated for no later than January 12, 2009)*.





Paul Morris

Executive Director, Admissibility and Passenger
Programs, Office of Field Operations



KEY REGULATORY CHANGES *IN CARGO SECURITY*

- Mandatory Filing of Export data through AES
 - (Trade Act of 2002)

- Container Seals on Maritime cargo

- 10+2 -- Importer Security Filing and Carrier Requirements (SAFE Port Act of 2006)



Mandatory Filing of Cargo Export Information Through AES

- Section 192.14 requires vessel, air, truck, and rail carriers to electronically file:
 - export cargo information through a CBP-approved electronic data interchange system (then and still the AES) and that such filing occur prior to departure from the United States for vessel and air carriers (24 hours for vessel carriers, two hours prior to scheduled departure time for air carriers) and
 - prior to arrival at the border for truck and rail carriers (one hour for truck carriers, two hours for rail carriers). *These regulations were published pursuant to section 343(a) of the Trade Act of 2002, as amended by the Maritime Security Act, (19 U.S.C. 2071 note).*



Mandatory Filing of Cargo Export Information Through AES continued...

- *A general notice was published on June 9, 2008 (73 FR 32466) to inform the public of that CBP will require compliance with the regulation pertaining to the mandatory, pre-departure electronic filing of export information through AES (19 CFR 192.14(e) on the effective date of the DOC regulations mandating use of AES for export information.*
- The DOC regulations were published as a final rule on June 2, 2008, with an effective date of July 2, 2008, and an implementation date of September 30, 2008.



Container Seals on Maritime Cargo

- General notice published on August 7, 2008 (73 FR 46029) to bring attention to the *existing statutory requirements* in 6.U.S.C. 944, as amended by Section 1701 of Title XVII (“Maritime Cargo”) of the *Implementing Recommendations of the 911 Commission Act of 2007 (911 Act)*.
- Under the 911 Act if DHS did not issue interim final regulations for establishing such minimum standards and procedures by April 1, 2008, effective no later than October 15, 2008, all containers in transit to the United States shall be required to be sealed with a seal meeting the ISO/PAS 17712 standard for sealing containers.
- DHS did not establish regulations; the requirement for container seals is now in effect. The notice outlines enforcement criteria and related the Trade Act requirements.





Greg Olsavsky
Director, Cargo Control Division,
Office of Field Operations



Importer Security Filing and Carrier Requirements (10 + 2)

- ❑ SAFE Port Act of 2006 *and* Trade Act of 2002(as amended) = Statutory Mandate.
- ❑ Proposed Rulemaking (NPRM) published on January 2, 2008
- ❑ Received approximately 200 comments.
- ❑ Preliminary Cost, Benefit, and Flexibility Analysis Posted on the web.



10 + 2

□ *GENERAL REQUIREMENTS:*

Carriers would have to transmit in addition to Manifest under 24 hour rule:

Stow Plan-- which Customs must receive via the CBP-approved electronic data interchange system (currently includes AMS, secure file transfer protocol, or email) a vessel stow plan for vessels transporting containers to the U.S., **no later than 48 hours after the carrier's departure from the last foreign port, OR, if less than 48 hours voyage, prior to the vessel's arrival** at the first port in the United States.

Vessels exclusively carrying bulk and break bulk cargo are exempt.



10 + 2 continued...

Container Status Messages-- which CBP must receive daily for certain events relating to all containers laden with cargo destined to arrive within the limits of a port in the United States by vessel. CSMs are used to report terminal container movements (e.g., loading and discharging the vessel) and to report the change in status of containers (e.g., empty or full).

The *Importer Security Filing Importer* would have to transmit via an approved electronic data interchange systems, an Importer Security Filing (ISF) to CBP, for cargo other than foreign cargo remaining on board (FROB), **no later than 24 hours before cargo is laden aboard a vessel destined to the United States.**

-For FROB- transmittal required any time prior to lading.



10 + 2 continued...

- 10 elements will be required for shipments other than those consisting entirely of foreign cargo remaining on board (FROB) and goods intended to be “transported” in-bond as an immediate exportation (IE) or transportation and exportation (T&E).
 - Manufacturer (or supplier) name and address
 - Seller (or owner) name and address
 - Buyer (or owner) name and address
 - Ship to name and address
 - Container stuffing location
 - Consolidator (stuffer) name and address
 - Importer of record number/foreign trade zone applicant identification number
 - Consignee number(s)
 - Country of origin
 - Commodity Harmonized Tariff Schedule of the United States number



10 + 2 continued...

- Five elements must be provided for FROB and shipments consisting entirely of goods intended to be “transported” in-bond as an IE or I&E.
 - Booking Party name and address
 - Ship To name and address
 - 6 Digit HTS number
 - Place of Delivery
 - Foreign Port of Unlading





Richard DiNucci

Director, Secure Freight Initiative, Office of
Field Operations



WRAP UP

A BIG REGULATORY YEAR FOR CBP IN:

- **TRADE AND FACILITATION**
- **TRAVELER FACILITATION AND SECURITY**
- **CARGO SECURITY**

- **QUESTIONS???**

