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# Simons & Wiskin

## Trade Talk

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### **CUSTOMS INCREASES PERSONAL EXEMPTION**

Effective November 4, 2002, the standard personal exemption for a resident U.S. returning traveler increased to \$800 from the current \$400. To qualify for this exemption, a traveler must have been out of the country for at least 48 hours and must not have used the exemption or any part of it for 30 days, and the items must be for personal or household use, must be in the traveler's possession when he returns, and must be declared to Customs. Members of a returning family who live in the same home and return together may combine their personal exemptions. Children are entitled to the same

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exemption as adults, except that it does not apply to tobacco or alcohol products. One liter of alcohol and 200 cigarettes or 100 cigars may be included in the exemption.

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### **ADVANCED MANIFEST RULE: Accurate Description of Merchandise**

On December 2, 2002, the U.S. Customs Service initiated a 24-hour advance vessel manifest rule. This rule requires carriers and/or automated NVOCC's to submit a cargo declaration 24 hours before cargo is laden aboard a vessel at a foreign port destined to the United States. Customs initially allowed a two-month grace period in which it would not take any enforcement actions against non-compliance. Effective February 1, 2003, Customs has the authority to begin enforcement actions against noncomplying carriers.

One of the elements of this advanced manifest procedure requires the carrier to provide a "precise description and weight of the cargo." Since carriers are unlikely to be able to describe an importer's cargo with precision, it is important for importers to coordinate efforts with the exporter to assure that exported goods are adequately

described. Failure of the cargo manifest to identify goods precisely will cause shipments to be delayed.

Customs has stated that identifying the goods by use of a six-digit tariff number satisfies the precise description requirement. However, if there is doubt about the accuracy of the tariff number, a precise narrative description is required. Because containers will be passed through imaging equipment, the description of the goods should be precise enough to identify any goods which emit radiation. A precise narrative description describes the article, not the class of goods to which it belongs. Thus, for CD players or monitors, the general term "electronics" is not a precise description, whereas "monitors" and "CD players" are. Similarly, the generic word "toys" is not a precise description for "dolls."

Customs has stated that it will initiate a strong enforcement action if such general descriptions, which have remained prevalent during the December 2002 to February 2003 transition period, continue to be provided by carriers after February 2, 2003. Customs has indicated that it plans to work with the trade to refine what descriptions are acceptable for various kinds of merchandise.

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**CIT DECIDES TWO CASES  
ON REFUNDS OF DUTY  
PAYMENTS**

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In January 2003, the U.S. Court of International Trade issued two contrasting decisions in attempts by importers to recover duty payments made after the liquidation of the entry had become final.

In *Thermacote Welco v. United States*, the court rejected the importer's attempt to recover an overpayment of duty. The importer had voluntarily tendered antidumping duties on the assumption that the liquidation of the entries was suspended. Later, it discovered that the entries had been liquidated and that its voluntarily tendered duties were in excess of the amounts actually owed. But the court ruled, first, that no refund was authorized under section 520(c)(1) of the Tariff Act, which permits refunds in cases of a clerical error, mistake of fact, or other inadvertence not amounting to an error of law. The importer failed under section 520(c)(1) because it had not requested the refund within one year from the date of liquidation of the entry, as required by the statute. Second, the court ruled that the importer could not recover the overpayment by filing a protest. In accordance with judicial precedent, the court ruled that the refusal to refund the payment was not a protestable "exaction" because the payment had been made voluntarily.

In contrast, in *Brother Industries v. United States*, the court permitted an importer to seek recovery of allegedly excess duties. It ruled that a protest claiming a refund may be

filed where a payment of duty was made in response to a demand for payment by the Customs Service. The court ruled that although the liquidation of the entry was final, the importer's payment was not voluntary, and instead constituted a protestable "exaction." This was because the importer faced a potential customs penalty proceeding if it had not tendered the duties. The court distinguished existing precedents that had held, as in *Thermacote*, that voluntary overpayments of duty are not protestable exactions. Thus, *Brother Industries* creates important new law in cases of Customs Service demands for duty payments after liquidation.

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**NEW GOVERNMENT WEB  
SITE ALLOWS PUBLIC  
PARTICIPATION IN THE  
FEDERAL RULE-MAKING  
PROCESS**

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In January 2003, the federal government launched a new web site, [www.regulation.gov](http://www.regulation.gov), which allows all citizens to participate in the federal ruling-making process by being able to submit comments on any proposed Federal regulation.

In the rule-making process, federal agencies are required to published proposed regulations for public comment. Prior to this web site, the proposed regulations were published in the *Federal Register* and public comment invited. Now, in addition to publication in the *Federal Register*, proposed regulations will be available through the new web site and anyone can submit comments via the web site.

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Please provide us with the names of any additional persons who you believe should receive this newsletter.

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**This newsletter is for informational purposes only and is not intended to set forth legal opinions. If the reader has any questions regarding the information contained herein, appropriate counsel should be consulted.**

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