
Simons & Wiskin

Trade Talk

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Filing Time of Protests Extended, But Section 1520(c) Repealed

On December 3, 2004, President Bush signed the *Miscellaneous Trade and Technical Corrections Act of 2004* into law. Among other provisions, the legislation changes procedure in which importers can challenge decisions of Customs and Border Protection. First, the time to file a protest has been extended from 90 to 180 days. Second, Section 1520(c)(1), which permits the filing of petitions within a year after liquidation to correct clerical errors, mistakes and other inadvertence not amounting to the construction of law, has been repealed. As amended, such errors can only be contested by filing a protest within 180 days of liquidation.

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These new provisions of the tariff laws are effective for all entries made on or after December 18, 2004. For entries made prior to this date, the law in effect prior to December 18, 2004, applies, *i.e.*, protests must be filed within 90 days of liquidation and 1520(c)(1) petitions can be filed to correct errors in entries.

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Drawback Statute Relating to Goods Not Conforming To Specification Changed

Section 1313(c) of the Tariff Act of 1930 provided for a refund of 99% of duties on imported goods which did not conform to specification at the time of entry, were shipped without the consent of the consignee or determined to be defective at the time of importation if the goods were exported or destroyed under Customs supervision within three years after release from Customs custody. As amended, one change to this section is that the time required for exportation or destruction is now three years from the date of importation.

In addition, the statute was amended to also include goods ultimately sold by the importer, or the person who received the goods from the importer

under a certificate of delivery, when such goods were returned for any reason to the importer or the person who received the goods from the importer under a certificate of delivery. When drawback is claimed under this new provision, goods that were imported within one year of the date of importation or destruction of the goods may be designated as the imported goods provided that the goods are identified in the import documents with the same eight-digit tariff provision and a specific product identifier, such as a product number, SKU or product code, as the returned merchandise.

Drawback certificates are not required when the drawback claimant and the importer are the same party or the successor to the importer.

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CBP No Longer Place Sole Reliance On IRS Transfer- Pricing Agreements As Evidence For Transaction Value

In several rulings issued over the last several months, CBP has stated that it will no longer solely rely on approved IRS transfer-pricing agreements to establish that a related importer and exporter were acting at arm's-length for purposes of determining that the imported goods should be appraised on the basis of its transaction value.

CBP's rationale is that it views related party transactions in a different manner from the IRS. CBP reviews related party transactions on a product-by-product basis, whereas the IRS may look at a company's products on an aggregate basis. CBP will consider transfer-pricing agreements as one indica of an arm's length transaction, but will look at criteria to ascertain whether the importer and exporter are dealing at arm's-length.

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CBP Changes Its Position With Respect To Homeopathic Products

In a revocation ruling issued on December 22, 2004, CBP Headquarters changed its position on the classification of a homeopathic product. To be classified as a medicament in Chapter 30 of the HTSUS, the product must have a significantly detectable amount of the active ingredient. Previously, CBP had held that homeopathic products in which the active ingredient was diluted to less than 16 times (or 8C) could be classified in Chapter 30, HTSUS, whereas greater dilution meant that the active ingredient was not detectable.

In HQ 987075 and HQ 967363, CBP Headquarters held that it will no longer use the dilution of the active ingredient to establish the homeopathic product's classification. Instead, such products will be classified in Chapter 30, subheading 3004.90.91, if the product is considered by the FDA to be a drug because the active ingredient or ingredients are officially included in the

Homeopathic Pharmacopoeia of the United States; the products are packaged with statements of the specific diseases, ailments or their symptoms for which the product will be used; the concentration of the active ingredients are stated; and the recommended dosage and mode of application are identified.

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CPSC Up-date

The U.S. Consumer Products Safety Commission presently has flammability standards for mattresses and mattress pads. In December 2004, the Commission voted unanimously to issue a proposed safety standard intended to reduce death and injuries from fires involving mattresses. The new standard will address mattress fires caused by an open flame.

At the same time, the Commission voted to issue a notice of intent to develop a separate safety standard for the flammability for bedclothes, a category that includes blankets, comforters and pillows. At present, it is not clear whether the Commission will also seek to include sheets and pillowcases within the definition of bedclothes. The Commission noted that "bedclothes are the first item to ignite in about 80 percent of mattress and bedding fires and can contribute substantially to the risks associated with mattress/bedding fires." The first step in the rulemaking process will be the publication of a notice in the Federal Register requesting public comments.

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Endangered Species News

The U.S. Fish and Wildlife Service, in conjunction with U.S. Immigration and Customs Enforcement and Mexican law enforcement agencies recently concluded an investigation of illegal bird trafficking. The case resulted in the seizure of rare parrots which were smuggled into the U.S. AS a result, the U.S. repatriated 90 of the rare birds were ultimately repatriated to their native Mexico. All of the parrots are protected species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES").

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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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