Simons & Wiskin

Trade Talk

Vol. 7 No. 2 May 2003

Donald W. Lewis, Esq. Joins Simons & Wiskin

The Firm is pleased to announce that effective May 1, 2003, Donald W. Lewis, Esq., former Director, Entry Procedures and Penalties Division and Director, Office of Regulations and Rulings at United States Customs Service Headquarters, has joined Simons &Wiskin in an *Of Counsel* capacity. At Customs Service Headquarters, Mr. Lewis was responsible for the legal and factual analysis, research, review and issuance of Customs Service Headquarters ruling letters, decisions and internal advice requests concerning commercial and penalty issues. Mr. Lewis, after retirement from government service, was the resident partner in the Washington, DC office of a customs, export and international trade law firm. Since 1994, he has maintained an individual practice in Washington, DC. Mr. Lewis will continue to practice and consult in customs, export and international trade law, with particular emphasis in penalties and enforcement matters (fines, penalties, forfeitures, liquidated damages and country of origin marking requirements) under the customs and related laws and regulations of the United States.

Mr. Lewis received his Bachelor of Legal Letters degree from Brooklyn Law School and a Bachelors of Arts degree from Queens College of the City University of New York. He is admitted to practice in the District of Columbia and the State of New York.

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Buyer Beware

Travelers abroad are often confronted with the opportunity to purchase souvenirs made from seemingly innocuous products such as tortoise shells and reptile skins. The fact that these products are offered in the marketplaces of the world does not necessarily make it legal to bring such products back to the United States.

Reptile skins and leathers are commonly used to manufacture belts, handbags, shoes and watchbands. The legality of importing these products into the U.S. depends on the species and the country of origin of the product. Prohibited imports include all sea turtle products, products made from black caiman, American crocodile, Orinoco crocodile, and Philippine crocodile, most lizard-skin products originating in Brazil, Costa Rica, Ecuador, Peru, Venezuela, India and Nepal, and many snakeskin products originating in Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Mexico, Venezuela, and India.

Most wild bird feathers, mounted birds, skins and skin products, and ivory products are also prohibited from import into the U.S. Furs from most large spotted cats, such as jaguars, snow leopards, and tigers, and from most smaller cats, such as ocelot and margay, are also prohibited from entry into the U.S. The same is true for furs of marine mammals, such as seals and polar bears.

There are no refunds if your purchase is seized by the Customs Service or by wildlife inspectors, and you might also find yourself subject to civil penalties. Don't rely on the word of a vendor that it's legal to import the product. The Fish and Wildlife Service recommends that international travelers follow this simple rule: "If in doubt, do without."

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Enforcement of the
24-hour Rule Expands

When 24-hour rule was enacted, the Bureau of Customs and Border Protection ("BCBP") only focused on significant violations of the requirement that cargo must be correctly and accurately identified on the manifest Beginning on May 4th, the BCBP will now issue "Do Not Load" messages to carriers if the manifest descriptions do not conform to this rule. For example, vague descriptions such as "apparel," "chemicals, hazardous," and "electronics" will not be accepted. Acceptable descriptions can be clothing, the actual chemical name (not a brand name) or computers or other terms which describe the electronic item, respectively. Further, monetary penalties will be issued for late submissions of the cargo descriptions.

Beginning on May 15th, "Do Not Load" messages will also be issued if there are clear violations of the consignee name and address requirement. Fields left blank or the use of non-identifying language such as "To Order" or "To Order of Shipper" in the consignee field without corresponding information in the consignee filed or incomplete or missing address of the consignee will be deemed incomplete and not acceptable.

Monetary penalties may be issued for "foreign cargo remaining on board" that has an invalid description and that was loaded on the vessel without providing the BCBP a 24-hour time period for review. The penalty may be $5,000 for the first violation and $10,000 for any subsequent violation.

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Free Trade Agreements
With
Singapore and Chile

The United States and Singapore signed their new bilateral Free Trade Agreement on May 6, 2003. The agreement will be submitted to Congress in the immediate future and, if approved this year, will take effect January 1, 2004. The United States has also negotiated a new Free Trade Agreement with Chile, but the signing has not been scheduled yet.

Singapore, where most imports are already duty-free, will eliminate all duties on U.S. goods immediately upon the entry into force of the agreement. The U.S. duties on products of Singapore will be phased out immediately or over four, eight, or ten years, depending on the product. In the U.S.-Chile agreement, both countries will phase out the duties immediately or over four, eight, ten, or twelve years.

In both agreements, the rules of origin for determining whether products are "originating goods" entitled to the benefits of the agreement are similar, but not identical, to NAFTA. Like NAFTA, if products do not originate wholly in one of the countries, "originating goods" status for each tariff category depends on specified changes in tariff classification, or a combination of changes in tariff classification and regional value content. The rules of origin appear to be simpler than NAFTA. For some products subject to both a tariff shift and a regional value content requirement under NAFTA, the two new agreements require only a tariff shift. This will apparently allow more products to qualify as "originating goods." It will also reduce the need for complex accounting analysis to determine regional value content, as well as reducing the required record keeping.

Manufacturing drawback will be eventually be eliminated on U.S. exports to Chile. The phase-out will take place over a twelve-year period, with full drawback benefits allowed for eight years before being reduced in four stages over the next four years. The rationale for eliminating manufacturing drawback is to discourage the use of imported components and materials in manufacturing operations for products traded between the two countries. In contrast, manufacturing drawback on exports to Singapore will not be affected. Since nearly all products from other countries enter Singapore free of duty, elimination of drawback would put U.S. exports at a competitive disadvantage.

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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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