
Simons & Wiskin

Trade Talk

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PENDING CHANGES IN CUSTOMS ADMINISTRATIVE REMEDIES

Congress is expected to enact important changes in the procedures for customs protests and other administrative remedies for importers dissatisfied with Customs and Border Protection decisions. A protest, which is the usual and most commonly used remedy, may be filed against a variety of Customs decisions, including decisions on the classification, dutiable value, rate and amount of duty, liquidation (*i.e.*, final duty assessment) of an entry, and exclusion of merchandise.

In current law, there is a 90-day limitations period for filing a protest. Specifically, the protest must be filed within 90 days after,

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but not before, the notice of liquidation or reliquidation for the entry being protested. Or, if the decision being protested was not made in connection with a liquidation or reliquidation, the protest must be filed within 90 days after, but not before, the date of the decision being protested.

Current law also contains, in addition to protests, a supplementary remedy available in limited circumstances, the so-called “section 520(c)” petition. A section 520(c) petition may be used to challenge a clerical error, mistake of fact, or other inadvertence not amounting to an error of law, which is adverse to the importer and which is manifest from the record or established by documentary evidence. The time period allowed for filing a section 520(c) petition is one year from the date of liquidation or exaction.

The pending legislation would make two fundamental changes. First, the period allowed for filing a protest will be increased from 90 days to 180 days. Second, the separate “section 520(c)” procedure will be abolished and merged into the protest procedure. Thus, in the future, a clerical error, mistake of fact, or other inadvertence not amounting to an error of law may be the subject of a protest, which must be filed within 180 days of liquidation.

The pending legislation includes a complex provision governing the effective date of the amended procedures. The amended procedures will apply to all entries entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the new statute is enacted. Thus, an entry made on or before the fourteen day after enactment will continue to be governed by the old procedures, with the 90-day protest window, even if the entry is liquidated long after the new procedure has taken effect for current entries. This means that the old procedures will remain applicable for several years, until all entries made before the effective date are exhausted. Importers will need to keep track of the entry date to determine whether the old procedures or new procedures apply.

The proposed changes are incorporated in the pending Customs appropriation bill. The legislation has already passed House of Representatives and is pending before the Senate, which is expected to approve the legislation in a special session of Congress before the end of 2004.

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**CONGRESS APPROVES
AND PRESIDENT SIGNS
TWO FREE-TRADE
AGREEMENTS**

On July 14-15, 2004, Congress approved both the United States-Australia Free Trade Agreement and the United States-Morocco Free Trade Agreement. President Bush signed the implementing statutes on August 3 (Australia) and August 17 (Morocco).

According to the Office of the U.S. Trade Representative, the U.S.-Australia Free Trade Agreement will eliminate duties “on more than 99 percent of tariff lines covering industrial and consumer goods” once the Agreement becomes effective. For other manufactured goods, duties will be phased out over a period of 10 years. The Agreement provides for duties on apparel and textiles to be eliminated if the goods meet the Agreement’s “yarn forward” rule of origin.

When the United States-Morocco Free Trade Agreement becomes effective, more than 95 percent of bilateral trade in industrial and consumer products will become duty-free. Imports of textiles and apparel will be duty-free if the articles meet the Agreement’s rule of origin. Qualifying and apparel articles must contain either U.S. or Moroccan yarn and fabric. The Agreement has a temporary 30 million square meter allowance for apparel containing 3rd country content.

For more information on whether a product will meet the Agreements’ rule of origin and qualify for

preferential tariff treatment, please contact our office.

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Did You Know?

The Federal Food, Drug and Cosmetic Act prohibits persons from importing prescription drugs into the United States if the drug has not been approved by the FDA for sale in the U.S. or those products which are adulterated or misbranded. The FDA has issued guidelines, “Coverage of Personal Importations,” with respect to any personal importation of drugs which have not been approved if these drugs are for personal use. Exercising its enforcement discretion, the FDA’s policy allows an individual to import a three-month supply of an unapproved drug if the following conditions are met: (1) The intended use of the drug is for a serious condition for which effective treatment may not be available domestically; (2) The drug will not be distributed commercially by the person importing the drug; (3) The drug is considered not to represent an unreasonable risk; and (4) The individual seeking to import the product affirms in writing that the drug is for the patient’s own use and provides the name and address of the doctor licensed in the United States responsible for his or her treatment with the product, or provides evidence that the product is for the continuation of a treatment begun in a foreign country.

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**TRUCK CARRIERS MUST
PROVIDE CBP WITH
ADVANCE CARGO
INFORMATION**

Beginning on November 14, 2004, CBP will require advance cargo notice for all inbound shipments of commercial goods via truck through 40 ports of entry. The required cargo notice must be provided by electronic transmission of the applicable data. The same requirement will be introduced at an additional 42 ports of entry on December 15, 2004. Finally, the requirement of advance notice of the cargo being imported by truck will become effective at an additional 16 ports of entry on January 14, 2005.

Please contact our office for a list of the effective date at individual ports.

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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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