

Sonnenberg & Anderson

Customs Law & International Trade Bulletin

Highlights:

- Security: C-TPAT Changes continue.
- Anti-dumping Duties: Byrd Amendment Repealed
- USTR Publishes Report on U.S. – Chinese Trade Relations.

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Continued Changes to C-TPAT by M. Jason Cunningham

The Voluntary *Customs-Trade Partnership Against Terrorism* continues to evolve as Customs, the trade community, Congress, and governmental agencies evaluate the effectiveness and deterrent value of the program.

While thousands of importers, exporters, carriers, and brokers are creating C-TPAT programs and submitting C-TPAT applications to Customs based upon early or previously revised security standards, several members of Congress have proposed a new law, the [Greenlane Maritime Cargo Security Act \(s.2008\)](#),

Greenlane would impose more stringent minimum security standards in order to receive any benefits of C-TPAT participation. Additionally, if passed into law, *Greenlane* would provide a regulatory basis for additional trade and transportation benefits not provided under the current program to participants that can demonstrate they surpass the minimum standards and meet the highest “Greenlane” standards.

We continue to advise our clients to evaluate current or planned C-TPAT applications in light of *Greenlane*’s proposed higher security standards.

Byrd Amendment Repealed by M. Jason Cunningham

The Continued Dumping Subsidy Offset Act, commonly referred to as the “Byrd Amendment,” has distributed antidumping duties collected by U.S. Customs to domestic producers of like product. Ruled as a violation of the United State’s obligations under GATT, it also brought World Trade Organization sanctioned retaliatory duties against U.S. goods exported to major trading partners in countries including the European Union.

On February 8, 2006, President Bush signed into law the Deficit Reduction Act, which repeals the Byrd Amendment, effective October 1, 2007.

Whether foreign countries will cease the imposition of higher duties on U.S. goods before October 1, 2007 is a political question and remains to be seen.



Customs Audits: FPA leads to QRA by M. Jason Cunningham

Since the Customs Modernization Act's introduction of "shared responsibility" and "informed compliance," Customs has piloted several different programs for auditing importers' and exporters' compliance with Customs regulations and laws.

Although the Focused Assessment Program around 2002 replaced the CAT Kit program, both guides remain relevant to importers and exporters when developing a Customs Compliance program. Both guidelines remain available on the agency's website.

Customs has recently announced an additional program, called [Quick Response Audits, "QRA's."](#) Quick Response Audits are narrowly tailored, single-issue audits. The agency has stated that it will use them to address particular limited objectives within a shorter period of time. While FPA remains in use as a device for the agency to conduct a more complete evaluation of a company's Customs and Border Protection (CBP) activities, QRA's are focus on select, targeted topics. At this time, it is unknown if the agency will expand the scope of a QRA when violations are discovered.

BIS Publishes Names Export Penalty Recipients

by M. Jason Cunningham

The Bureau of Industry and Security ("BIS") enforces U.S. export regulations. As part of the agency's deterrence program, it has posted a list of persons and companies who have received penalties for activities related to export activities. The recent penalties are posted on BIS's website, [here](#).

Exported articles must comply with regulations from several agencies, including the Department of Commerce's BIS, the Department of State, and the Department of Treasury's Office of Foreign Assets Control.

As shown in the BIS website, violations of export regulations can result in monetary penalties and/or incarceration.

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USTR Issues New Report on U.S. – China Relations

by M. Jason Cunningham

The United States Trade Representative has issued an [evaluative report](#) of the recent and, likely, future status of trade between the United States and China.

While the report stresses the mutual benefits that both countries have experienced from increased trade and interdependence, it also provides a cautionary outlook, stating:

"In particular, there is concern that the U.S.-China trade relationship lacks balance in opportunity, as well as equity and durability, with China's focus on export growth and developing domestic industries not being matched by a comparable focus on fulfilling market opening commitments and on the protection of intellectual property and internationally recognized labor rights.

Specific U.S. concerns include: continued Chinese barriers to some U.S. exports; failure to protect intellectual property rights; failure to protect labor rights and enforce labor laws and standards; unreported and extensive government subsidies and preferences for its own industries; environmental concerns; spotty compliance with some international trade rules; and a large and growing imbalance in our bilateral trade flows, resulting in a trade deficit of almost \$202 billion in 2005. Chinese barriers to U.S. exports that contribute to this deficit and appear inconsistent with China's multilateral and bilateral commitments have a corrosive effect on political support for the bilateral trade relationship... [with] damaging consequences for both countries."

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The law firm of Sonnenberg and Anderson has guided clients through Customs and International Trade Law for more than two decades.

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- U.S. Department of Commerce
- U.S. International Trade Commission
- U.S. Court of International Trade
- Court of Appeals for the Federal Circuit



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