



## Miscellaneous Trade and Technical Corrections Act of 2004 Signed Into Law

The Miscellaneous Trade and Technical Corrections Act of 2004, signed into law by President George W. Bush on December 3, 2004, makes a number of important changes to trade law, which are now in effect. While these changes are, for the most part, highly technical changes to U.S. Customs laws, companies with significant importing operations need to understand the new rules fully. Federal law requires importers to exercise reasonable care in all their import activities, which includes the obligation to understand and comply with new Customs rules. In addition, importers need to understand how to preserve their rights to relief under the new law, when U.S. Customs makes mistakes in handling their imports.

We provide a description of the most important practical changes affecting import activities. The changes most immediately relevant to regular import operations relate to Customs protests, Customs' right to extend the time period prior to finalizing its treatment of an entry (so-called "liquidation"), the Customs reconciliation process, and the timing for depositing duties and fees owed to Customs.

### CHANGES IN PROTEST PROCEDURES

When the Bureau of U.S. Customs & Border Protection (CBP) makes an adverse decision that increases Customs duties on an import or restricts the entry of goods into the U.S., the importer has the right to protest this decision. CBP reviews the protest and decides whether or not to change its earlier decision. If CBP does not agree with the importer and denies the protest, the importer can appeal this adverse decision to the federal courts. If the importer does not file a valid protest, however, the importer cannot obtain either administrative relief or the right to a court appeal.

The Act makes various changes to the rules for protesting a decision made by CBP. First, the time frame in which to file a protest has been extended from 90 days to 180 days from the date of liquidation or reliquidation, or, if liquidation is not involved, from the date of the decision being protested. Similarly, the time frame for a surety to file a protest based on an unsatisfied legal claim under its bond is extended from 90 days to 180 days from the date that its notice of demand for

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payment was mailed. These changes will make it easier for importers to meet protest deadlines and therefore will improve the chances of obtaining relief from a CBP error.

The Act also changes the rules for filing a request for accelerated disposition of a protest. This will help importers move an issue to courts more quickly, when it appears that CBP will not change its adverse position. Previously, requests for accelerated disposition could only be filed after 90 days had elapsed following the filing of the protest. Now, importers may file a request at any time concurrent with or following the filing of the protest. Once a request for accelerated disposition is made, if CBP does not rule on the request within 30 days from the date of mailing, the request is deemed denied. The importer can then pursue the issue in the more neutral forum provided by the courts.

### **END TO SPECIAL PROCEDURE FOR CORRECTING CLERICAL ERRORS**

The Act balances this improvement in importer protest rights with the removal of a federal statutory provision that was very helpful to importers. The Act repeals 19 U.S.C. § 1520(c). This provision gave CBP the authority to reliquidate an entry to correct clerical errors and mistakes of fact, when the error was brought to CBP's attention within one year after the initial liquidation. Now, clerical errors

and mistakes of fact can only be challenged in a formal protest.

Under the new rules, therefore, importers must act much more quickly to obtain relief from a CBP ministerial error. Instead of having a year after liquidation to find the problem, importers must be sure to doublecheck all Customs entry decisions that adversely affect the importer, so that action on clerical errors is taken within 180 days (rather than the previous one year) after liquidation.

### **CHANGE IN RECONCILIATION RULES**

Reconciliation is the process the CBP has instituted to allow importers to provide their best estimates of certain information the CBP requires at entry, when the importer cannot provide the precise data until after the goods have entered the United States. CBP allows the importer to flag the entry containing the estimated information, and then to provide the fully accurate information—a reconciliation—within a certain period of time.

The Act makes one important change to the reconciliation rules. Under the old law, the importer had to provide the fully accurate information within 15 months of the entry summary filing. This created hardships for importers who, for example, could not determine a final value until after a corporate year end close. The Act extends the deadline for importers to file reconciliation entries from 15

months to 21 months. The change gives importers more time to review their financial and import records before making a definitive declaration to CBP related to an import.

### **CHANGES IN DUTY PAYMENT TIMING**

The Act makes one important change to the payment timing for an importer paying duties and fees on an entry by entry basis. Importers normally had been required to pay duties and fees for their consumption entries within 10 working days from the date of entry or release. The Act extends the deadline for depositing duties and fees from 10 working days to 12 working days.

CBP also recently has promulgated regulations allowing participating importers to use a periodic payment system that is part of the Automated Commercial Environment (ACE). Under this system, estimated duties and fees may be deposited no later than 15 working days following the month in which the goods are entered or released, whichever comes first.

### **OTHER MISCELLANEOUS CHANGES**

Finally, the Act makes various miscellaneous changes that may be relevant to certain importers. These include several changes to the duty drawback laws that permit more opportunity to obtain duty refunds on imported goods that are later re-exported. The Act also temporarily reduces or suspends duty rates on

approximately 300 products through amendments to the Harmonized Tariff Schedule of the United States. Most of the reduced duties relate to chemical products, machinery and tools. Additionally, the Act requires the liquidation or reliquidation of certain specified entries at reduced duty rates and contains a number of changes in the treatment of various textile and apparel imports. Finally, the Act allows the President to extend normal trade relations status to Laos and permanent normal trade relations status to Armenia. These changes will reduce the duty rates payable on imports from these countries.

*We hope that you find this brief summary helpful. If you would like more information on the Act, or you have questions about other “hot” Customs issues, whether it is the latest developments on the C-TPAT import security initiative, or Customs’ enforcement of its stricter policies on ultimate consignees, please feel free to contact your Arnold & Porter LLP attorney or:*

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