



that services containerized cargo for the US to approve, implement and utilize such technology and systems for all cargo destined for the United States...when the U.S. government does not even try to perform this function itself and scans virtually zero US export containers. We expect that, if Congress were to proceed...foreign governments are likely to establish 'mirror image' requirements on the US government -- requirements which the US government and US port operations are presently and for the foreseeable future incapable of meeting."

### Trade Deals Going South? by Lawrence M. Friedman

In each CCSContact issue, the lawyers of Barnes, Richardson & Colburn will provide useful information and insight into issues affecting importers, brokers, and customs compliance professionals. Feel free to contact them with comments and/or suggestions at [www.barnesrichardson.com](http://www.barnesrichardson.com) or [lfriedman@barnesrichardson.com](mailto:lfriedman@barnesrichardson.com). In their first column, they address the status of the four free trade agreements the Bush Administration has negotiated but which remain pending approval by Congress.

The Administration continues its efforts to push free-trade agreements on several fronts with interesting activity happening in South and Central America. For brokers and compliance professionals, these agreements create complexity as surely as they create

opportunities. Each agreement has its own rules of origin, documentation, and recordkeeping requirements. Each claim for duty preference made under a free trade agreement is subject to verification by U.S. Customs. Importers, therefore, need to carefully weigh the risks and rewards associated with trade agreement compliance when making purchasing decisions.

In June, the U.S. and Peru completed negotiations to amend provisions relating to labor and the environment. On the labor front, the amendments require both countries to recognize five core International Labor Organization rights including prohibiting the worst forms of child labor, freedom of association, and the right to collective bargaining. Unlike the NAFTA, the labor and environment provisions of the Peru Trade Promotion Agreement are part of the main agreement, not side letters. These changes were necessary to comply with the bi-partisan agreement on trade reached between the President and leaders in Congress.

The U.S. has completed the negotiation of a similar agreement with Panama. Regarding the heavily regulated textile trade, the Panama Agreement calls for a "yarn-forward" rule of origin. Under this approach, textiles and apparel will be considered originating and, therefore, entitled to duty-free status, only if the yarn and fabric originated in the U.S. or Panama. And, unlike other similar agreements, there is no tariff preference level rule in the Panama Agreement. The Peru Agreement, by contrast has some exceptions to

the "yarn-forward" rule, also avoids the use of TPLs, but does include a short supply mechanism. Both the Peru and Panama agreements are seen as having a good chance of being passed by Congress when it takes them up.

A more difficult part of the President's trade agreements agenda may be the agreement it has negotiated with Colombia. Early in July, House leaders, including Speaker Nancy Pelosi and Rep. Rangel publicly raised skepticism over whether Colombia was an appropriate candidate for a trade deal. The statement cited "widespread concern in Congress about the level of violence in Colombia."

Meanwhile, the Administration continues to press for passage of the U.S.-Korea FTA. This agreement is fully negotiated but will not be sent to Congress for consideration until the Korean market has been re-opened to US beef exports, lifting restrictions put in place after findings of BSE in US beef during the last two years. Korean officials believe the market will be opened by September. Questions have also been raised over the Agreement's potential impact on the automobile sector which could see increased competition from Korean trucks. The U.S. International Trade Commission is expected to complete its report on the impact of the Korea Agreement by September 20, 2007.

President Bush has completed and implemented trade deals with a wide range of countries including Chile, Bahrain, Morocco, and Australia. The Administration remains committed to additional



free trade deals. Discussions have been held with Thailand, Malaysia, Vietnam, and the South African Customs Union. Vietnam and Georgia have signed Trade and Investment Framework Agreements with the U.S. However, the President's trade negotiating authority expired on June 30, and any new agreements will not qualify for the fast track up-or-down vote in Congress until that authority is renewed. Since Congressional leadership shifted to the Democratic party this year, it is considered unlikely that authority will be renewed until the next Administration; it is considered only slightly more likely that any of the four pending FTAs will come to a vote in Congress this year.

### **Reminder: CBP Replacing ACS and AES Interface Support System**

In ADMIN MESSAGE #07-0097 APRIL 26, 2007, CBP announced that it will be finalizing replacement of the existing 800-dial-up and Sprint Frame Relay/MG Series Services that currently support older trade system interfaces to the Automated Commercial System (ACS) and Automated Export System (AES). The upgrade of these mission critical interfaces is necessitated by rapidly accelerated changes in the telecommunications industry. As a result, CBP has been changing existing IBM SNA (LU6.2/RJE) and frame relay infrastructures with solutions that utilize Internet Protocol (IP) Services. The IP solution we have been migrating to is Virtual Private Network (VPN.)

ABI administrative message 05-0954 announced the

effort to replace the 800-dial-up service in August 2005, while estimating the conversion to conclude in 18 months. At this time, CBP has established September 30, 2007, as the final sunset date for 800-dial-up service to end. In addition, the sunset date for Sprint Frame Relay/MG Series Users will be August 31, 2008.

In accordance with the above dates, trade partners will have the option to implement one of the following five methods of communicating to CBP:

- Public internet CISCO VPN/MQ series via a client provisioned internet service provider (ISP)
- Sprint or Verizon Multiprotocol label switching (MPLS) VPN, a private CISCO VPN /MQ series solution
- Service center
- VAN (value added network)
- VPN via toll free dial where an ISP is not accessible.

### **New Court Decision May Broaden the Scope of Durbin Introduces Legislation To Impose Fee On Food Imports**

Senator Dick Durbin (D-IL) this week introduced a bill designed to strengthen the Food and Drug Administration's (FDA) inspection of food imports by assessing a fee on food products that enter the US from other countries. The legislation gives the Administration the authority to set the amount of the fee, not to exceed \$20 per line item. Durbin's bill also requires the FDA to establish an Imported Food Certification Program, where foreign governments and

foreign firms that export food products to the US would have to be certified that they meet standards equivalent to those of the United States for food safety, inspection, labeling and consumer protection. They also must agree to allow US regulators to inspect foreign factories. In introducing the bill, Senator Durbin said, "the system needs to be fixed immediately."

### **Duty-Free "Festive Articles"**

In *Wilton Industries v. United States*, Slip Op. 07-94 (Ct. Int'l Trade, decided June 11, 2007), the U.S. Court of International Trade (CIT) considered the eligibility of over 150 articles entered in 1999 for duty-free classification as festive articles under Heading 9505. In addition to articles associated with recognized holidays, the CIT expanded its interpretation of the provision to include merchandise associated with personal celebrations such as weddings, birthdays, graduations and anniversaries.

[The court declined to identify the outer limit of what could be considered a qualifying private festive occasion. The court did note, without endorsing, a Canadian case which held that the occasion of a child receiving a good report card as well as a "child's soccer party" constitute festive occasions. However, the CIT gave no indication that it would adopt so broad an interpretation.]

The court rejected the government's primary argument it had previously raised in *MichaeI Simon Design, Inc. v. United States*, 452 F. Supp. 2d 1316 (Ct. Int'l Trade 2006), *appeal docketed*, No 2007-1028