



Insights on Trade & Customs

December 2017

Welcome to the KPMG Trade & Customs newsletter. Each month, our firm's trade compliance professionals will share recent developments of interest to our clients and industry peers. Inquiries about the topics presented herein may be directed to any member of our practice's leadership team.

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Where We Were:

- U.S. Fashion Industry Association-Apparel Importers Trade and Transportation Conference debrief, November 15, 2017, New York, New York
- CBP East Coast Trade Symposium debrief- December 5-6, 2017, Atlanta, Georgia

Come See the KPMG T&C Team:

- 2018 NAFTA Fundamentals of FTZs Seminar, January 7–8, 2018, New Orleans, Louisiana
- Outdoor Industry Association-Adding Supply Chain Value through Foreign Trade Zones (FTZs) and Duty Drawback, January 25, 2018 Denver, Colorado
- NAFTA 2018 Legislative Summit, February 13, 2018 Washington, DC
- Society for International Affairs Spring Conference, March 8–9, 2018, Denver, Colorado
- Georgetown University Law Center 39th Annual International Trade Update, March 8–9, 2018 Washington, DC
- 2018 ICPA Annual Conference, March 11–14, San Diego, California
- American Conference Institute-7th Advanced Industry Forum on Global Encryption, Cloud and Cyber Export Controls, March 28–29, 2018 San Francisco, California

KPMG Events and Webcasts

- KPMG Trade & Customs Update, November 28, 2017, San Francisco, California
- Thomson Reuters-2017 Global Trade Survey-Results-Webcast hosted by Thomson Reuters on, November 30, 2017, featuring Doug Zuvich, KPMG Senior Partner and Global Practice Leader
- KPMG TaxWatch Webcast: Establishing a Leading Export Compliance Program-Webcast hosted on, December 4, 2017
- KPMG Trade & Customs Update, December 12, 2017, Philadelphia, Pennsylvania
- KPMG Trade & Customs Update, March 6, 2018 Tysons Corner, Virginia

TaxNewsFlash Alerts – Trade & Customs

TaxNewsFlash alerts provide summaries of the latest regulatory and legislative developments being reported by KPMG International member firms. To learn more, go to: [Trade & Customs-TaxNewsFlash](#).

Legal Decisions

[Erwin Hymer Grp. N. Am., Inc. v. United States, No. 16-00133, 2017 WL 5197179 \(Ct. Int'l Trade Nov. 3, 2017\)](#)

The U.S. Court of International Trade (CIT) denied Erwin Hymer Group North America, Inc.'s (Hymer) motion for judgment on the pleadings and granted U.S. Customs and Border Protection's (CBP) motion for judgment. The issue involved the import of automobiles into the United States from Canada in 2014. CBP had classified the entries under subheading 8703.24.00 of the Harmonized Tariff Schedule of the United States (HTSUS) at a duty rate of 2.5 percent. In response, Hymer filed a protest challenging CBP's classification of the entered vehicles. Hymer contends that the entered vehicles should have been classified under subheading 9802.00.50, which is duty free.

In reviewing the protest filed by Hymer, a CBP import specialist mistakenly checked the "Approved" box on the protest form. Upon further review, the protest status was changed from "Approved" to "Suspended." As a result of the CBP import specialist initially marking the "Approved" box on the protest form, Hymer argued that CBP was required to reliquidate the entries and refund the duties paid. Alternatively, CBP argued that the marking of an "Approved" box on a protest form, absent an accompanying liquidation, does not trigger a requirement to refund paid duties.

The CIT emphasized that Hymer had misconstrued the statutory requirements in rendering its decision in favor of CBP. Pursuant to 19 U.S.C. § 1505(a), CBP must either "allow" or "deny" a protest. However, it is noteworthy that the statute does not include a formal definition of the term "allow." The CIT reasoned that since an allowance will result in the refunding of excess duties, and liquidation is the method by which excess duties are calculated, an allowance of a protest can only occur through a liquidation. By contrast, in arguing that marking an "Approved" box on a protest form is equivalent to allowing a protest, the CIT noted that Hymer had mistakenly equated the statutory term "allow" to mean it was approved. The CIT ruled in favor of CBP and granted its motion for judgment based on the CIT's interpretation of 19 U.S.C. § 1505(a) and a lack of statutory support for Hymer's argument.

[OFAC sanctions American Express for violations of the Cuban Assets Control Regulations](#)

The U.S. Department of Treasury Office of Foreign Assets Control (OFAC) and American Express Company (Amex) have reached a settlement after Amex voluntary self-disclosed 1,818 apparent violations of the Cuban Assets Control Regulations outlined under 31 C.F.R. § 501. Amex moved forward with said disclosure after discovering that credit

cards issued by BCC Corporate SA (BCCC), a wholly owned subsidiary of Alpha Card Group, 50% of which is owned by Amex, were used on several occasions to make purchases in Cuba. BCCC processed 1,818 transactions totaling \$583,649.43 relating to purchases in Cuba between April 9, 2009 and February 3, 2014. To settle the potential civil liability for the violations, OFAC and Amex have agreed that Amex will remit \$204,277 in penalties as a result of the disclosure.

[HQ H287490 \(10/6/2017\)](#)

CBP determined in this ruling that costs incurred for the design of imported merchandise by foreign third-party service providers are considered assists and need to be included in the price paid or payable for the imported merchandise. Miss Elaine, Inc. (Miss Elaine) intended to import women's sleepwear into the United States. In creating the sleepwear, Miss Elaine contracted with certain Dutch designers to create designs, sketches, and prints (designs). Once ultimately modified by Miss Elaine and the Dutch designers, the designs were sent to a manufacturer in China to produce the sleepwear.

In holding that the designs were dutiable assists, CBP referenced 19 U.S.C. § 1401a(h)(1)(A)(iv), which states that an assist can comprise "design work...undertaken elsewhere than in the United States and necessary for the production of the imported merchandise." CBP noted that based on CBP precedent, design work is necessary for production when the imported merchandise "would not exist in its form imported but for provision of these services and materials." (See HQ Ruling 548566 [October 19, 2004]).

Since the designs at issue were extensive, and were to be applied directly by the manufacturer in producing the merchandise, CBP held that such production costs were necessary and should be included in the import price. Specifically, CBP focused on the fact that the Dutch designers conceived the overall design, shape, color scheme, print patterning, and material makeup of the goods, all of which would be directly incorporated into the technical package for the manufacturer without modification by Miss Elaine. Further, the designers remained involved in the product development process after conception, providing feedback for manufacture. Here, CBP disregarded the fact that Miss Elaine was the party providing the designs to the manufacturer and, rather, focused on who developed the items necessary for the production of the goods.

Additionally, although production of the designs occurred in both the United States and the Netherlands, the design work of the Dutch designers significantly contributed to the final product and, therefore, was held by CBP that all design-related work undertaken in the Netherlands represented the dutiable portion of the assist provided to the manufacturer.

The value of the said assist is the value of the payments made to the Dutch designers, inclusive of the costs of shipping of the technical materials to the manufacturers.

Although CBP held the design work to be a dutiable assist, CBP held that promotion costs associated with marketing the imported merchandise were not dutiable. CBP reasoned that the costs associated with a photo shoot and creating promotional brochures were not included within the statutory language of 19 U.S.C. § 1401a(h)(1)(A)(iv).

Policy Developments

[North Korea Sanctions for Forced Labor](#)

Any significant merchandise mined, produced, or manufactured wholly or in part by North Korean nationals or citizens is prohibited from entry into the United States unless CBP finds through clear and convincing evidence that the merchandise was not produced with a form of prohibited labor. This was passed into law on August 2, 2017 under the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) 19 U.S.C. § 1307 and the Countering America's Adversaries through Sanctions Act (P.L. 115-44)(CAATSA). TFTEA and CAATSA and its resulting amendment of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. § 9241 et seq.) have essentially resulted in a presumption that goods produced with North Korea labor are prohibited goods. CBP may take a variety of actions to combat the entry of such merchandise, including issuing a CBP summons or Request for Information, and, where appropriate, detaining, excluding, seizing, or withholding release of merchandise that violates applicable laws and regulations.



Importers questioned how this law will be enforced by CBP and the burden of proof that is necessary to establish that imported merchandise is not produced with North Korean labor. On November 7, 2017, CBP initiated an outreach effort to clarify its intentions with respect to this law. Of note, CBP recently updated its Informed Compliance Publication on Reasonable Care to include a section on [Forced Labor](#). While the Reasonable Care publication does not address how the law will be applied and enforced, CBP indicates ways that importers can employ reasonable care, including:

- Developing and implementing procedures to prevent forced labor imports
- Due diligence measures for how your goods are made, from raw materials to finished goods
- Reviewing the active withhold release orders on CBP's "[Forced Labor](#)" [Web page](#).
- Obtaining a preemptive ruling
- Conducting internal and external audits of your supply chain
- Including provisions in your supply contracts that prohibit forced labor
- Maintaining a comprehensive social compliance program
- Consulting the [Department of Labor](#) and [International Labour Organizations](#) publications on risk factors for forced labor.

CBP has also published seven fact sheets on various topics related to forced labor, including [Forced Labor – Importer Due Diligence](#).

CBP's enforcement of the aforementioned import prohibitions has more recently manifested in information requests (CBP Form 28 – Request for Information) issued to specific targeted importers. Moreover, CBP is asking its national account managers to confirm the level of diligence performed by the importer to prevent forced labor. The importing industry has taken note and is on notice, but the question remains as to how to handle a CF28 should you receive one. KPMG will continue to monitor this issue and will keep you updated as it develops. If you receive a CF28 for Forced Labor, please contact KPMG Trade & Customs.

[North Korea designated as State Sponsor of Terrorism](#)

On November 20, 2017, President Trump placed North Korea back on the list of state sponsors of terrorism. The designation will trigger new sanctions by OFAC. North Korea was originally removed from the list by President George W. Bush in 2008. The new designation is the result of increased tensions between

the Trump administration and North Korea but may add little in the way of sanctions beyond those already imposed.

[NAFTA Fifth Round Renegotiations Update](#)

The fifth round of the North American Free Trade Agreement (NAFTA) renegotiations took place in Mexico City this month. This round drew less attention than the previous rounds due to the fact that top trade representatives from each country were not present and because each country is either in, or approaching, a period of political activity. The White House dulled down their rhetoric relating to NAFTA and trade in an effort to round up congressional support for the tax reform bill.

Tensions were still high, however, in the wake of the United States's introduction of multiple proposals in previous rounds of the renegotiations. Specifically, the United State's automotive sector and "sunset clause" proposals continued to receive the bulk of attention. In response to the automotive sector proposal, more than 70 bipartisan members of Congress sent a letter to the Trump administration on November 15, 2017 asserting an opinion that this proposal would reduce America's global competitiveness. Next, in regard to the American proposed "sunset clause," Mexico, with the support of Canada, suggested that instead of NAFTA automatically terminating every five years unless each member state agrees to its continuance, as the "sunset clause" proposes, NAFTA should be reviewed every five years and not automatically terminate.

At the conclusion of the fifth round, Canada told the United States that little progress could be made, and Chrystia Freeland, the Canadian Foreign Minister, warned that "significant differences remain on some key areas." U.S. Trade Representative Robert Lighthizer stated "thus far, we have seen no evidence that Canada or Mexico are willing to seriously engage on provisions that will lead to a rebalanced agreement." Initially, the renegotiations were not scheduled to go into 2018. However, the lack of compromise has caused the members to extend renegotiations to the end of March 2018.

Negotiators are committed to moving forward in all areas of the negotiations in order to conclude negotiations as soon as possible. The sixth round of negotiations will take place on January 23–28, 2018 in Montreal, Canada. In the meantime, negotiators will continue their work in Washington, DC throughout mid-December.¹

¹ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/november/trilateral-statement-conclusion>

[AAFA Letter in Support of NAFTA](#)

On November 20, 2017, the American Apparel & Footwear Association (AAFA) sent the Senate Committee on Finance a letter urging U.S. officials renegotiating NAFTA to prioritize four objectives: (i) Do No Harm; (ii) Implement Any Changes in a Seamless Manner; (iii) Keep the Agreement Trilateral; and (iv) Take Advantage of These Talks to Fix Other Problems. The AAFA is the national trade association of the apparel and footwear industries and their suppliers and represents nearly 350 companies that account for close to 1,000 brands. The letter stated “AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of \$384 billion in annual U.S. retail sales.”

Regarding “Do No Harm,” the AAFA states that, although they welcome opportunities to modernize the NAFTA, they “strongly reject” any efforts to terminate, withdraw, or change the terms in any way that would lessen the ability of companies to use the agreement. The AAFA asserts that much of the textile manufacturing in the United States is linked directly to NAFTA through U.S. exports to NAFTA partners and that “several hundreds of thousands of U.S. textile, apparel and footwear jobs are directly supported by NAFTA trade, while several million more U.S. jobs are indirectly supported by the agreement.” The AAFA and its membership have also provided suggestions on ways to improve the NAFTA rules of origin. AAFA also suggests that the jobs in Mexico and Canada which are supported by NAFTA help in advancing American economic interests.

In the second objective “Implement Any Changes in a Seamless Manner,” the Association warns that a cautious approach be used when considering any proposals in order to ensure that existing supply chains are not damaged. AAFA pointed to changes that occurred after the Colombia Free Trade Agreement, which resulted in a spike in duty rates for originating apparel from Colombia.

The third objective, “Keep the Agreement Trilateral,” emphasizes the importance of North America remaining a single trading bloc, which allows textile, apparel, and footwear companies to sell products and maintain effective supply chains in all three countries. The letter advised that instead of dissecting NAFTA and creating bilateral agreements in NAFTA’s place, “[the negotiators] should instead be exploring opportunities to link NAFTA partners with natural trading partners in the hemisphere, such as those in Central America.”

The AAFA concludes the recommendations it sent to the Senate Committee on Finance by urging negotiators to “Take Advantage of These Talks to Fix Other Issues,” such as foreign trade barriers and modernizing NAFTA’s enforcement of intellectual property rights.

[Kirstjen Nielsen confirmed as the next Homeland Security Secretary](#)

On December 5, 2017, Kirstjen Nielsen, President Trump’s nominee for the Department of Homeland Security (DHS), was confirmed by the Senate. She originally faced criticism during the confirmation hearings, with the panel questioning her lack of high-level management experience (agencies with more than 200,000 employees), lack of experience in enforcement matters, and close ties to the White House.

Nielsen started her career drafting legislation and policy at the Transportation Security Administration. She then served as a White House adviser for emergency preparedness and disaster management under President George W. Bush. She is currently serving as the White House deputy chief of staff under John F. Kelly.

President Trump praised Ms. Nielsen as having a “sterling reputation” and dedicated to national security, “not politics or ideology.”

[Alliance for Bangladesh Worker Safety Annual Report 2017](#)

Recently, the Alliance for Bangladesh Worker Safety (ABWS) published its Annual Report documenting the progress that has been made in regard to worker safety in Bangladesh. Created four years ago, the ABWS aims to establish safety reforms in the garment industry of Bangladesh through the introduction of corrective action plans, factory safety committees, and worker empowerment programs. ABWS issued corrective action plans requiring factories to address issues relating to worker safety, notably, issues relating to factory structure and fires. While the ABWS does not maintain the power to close noncompliant factories, factories that fail to implement ABWS-issued corrective action plans can face suspension from the ABWS-compliant factory list. To date, 162 factories have been suspended from the ABWS-compliant factory list.

Since the creation of the ABWS, 234 ABWS affiliated factories have substantially complied with their respective corrective action plans. Specifically, in 2017, 85 percent of active ABWS factories had completed all required safety repairs. Additionally, as noted by the annual report, August 2017 marked the first time that the number of corrective action plan completions was greater than the number of factory suspensions from the ABWS-compliant factory list.

In addition to corrective action plans, the ABWS has emphasized factory safety committees and worker empowerment programs as alternative means of effecting safety reforms. Democratically elected safety committees are present in 171 ABWS-affiliated factories. These committees provide workers with a platform through which they can directly communicate issues and concerns with factory management. In regard to worker empowerment programs, the ABWS has trained over 1.4 million factory workers across 1,021 factories in fire safety protocols through its Basic Fire Safety Training program. Likewise, the ABWS established a safety helpline through which factory workers can anonymously report their safety concerns. Currently, the safety helpline is available to over 1.35 million workers across 941 factories.

For more information, see the [Bangladesh Worker Safety Annual Report 2017](#).

[Summary of Commerce/DHS MOU for E-Commerce shipments](#)

The Department of Commerce (DOC) and the Department of Homeland Security are teaming up to tackle a rapidly developing, but still fairly new issue: the world of e-commerce shipments. As many companies continue to build out their e-commerce businesses to compete in a global marketplace, they are finding that traditional supply chain methodologies do not work in the e-commerce space.

The goals of the partnership are to:

- Promote public-private dialogue and consensus on the parties' e-commerce-related homeland security and commerce priorities, policies, and programs
- Leverage each agency's relationship with industry stakeholders to promote compliance with U.S. trade laws
- Identify and address constraints in international cross-border capacity and other factors related to e-commerce
- Attempt to measure e-commerce-based shipments and good movements to allow these measurements to inform policy decisions.

The announcement also listed specific actions they will undertake in the next five years, including:

- Establishing points of contact for e-commerce within each agency
- Utilizing WTO relationships to discuss ways to improve and streamline cross-border processes as they pertain to global e-commerce.

One of the most interesting and potentially impactful goals of the partnership is the plan to "jointly develop and support innovative provisions in U.S. bilateral and multilateral free trade agreement negotiations that facilitate and promote a legitimate e-commerce supply chain, including provisions related to automating customs clearance processes, preserving intellectual property ... and supporting international trade in e-commerce services that serve as the foundation for the e-commerce supply chain."

This is exciting news for companies that face the difficult task of navigating trade laws and requirements not designed for low-value/high-volume e-commerce shipments. For more information, see the [International E-Commerce Supply Chain MOU between the DOC and DHS](#).

[Foreign Trade Zones Board Annual Report to Congress and Summary of Zone Statistics](#)

Each year, the U.S. Foreign Trade Zones Board (FTZ Board) prepares and submits an annual report to Congress summarizing Foreign Trade Zone (FTZ) activity for the calendar year. On November 16, 2017, the FTZ Board issued the 78th Annual Report to Congress. Each FTZ operator/user is responsible for submitting an annual FTZ board report covering their own activity to their grantee, who in turn collects and prepares the information for their FTZ area for submission to the FTZ Board. The annual FTZ Board report to Congress underscores the importance of the FTZ program to the United States economy and reinforces the importance of the program's continuance.

Some of the highlights from the report:

- There were 195 active zones during 2016, with 324 production operations.
- A total of 420,000 persons were employed in FTZ capacities at around 3,300 companies that used an FTZ during 2016.
- There was a slight decrease in the value of shipments from FTZs in 2016 (\$660 billion in 2015 and \$610 billion in 2016).
- Production operations accounted for 63 percent of zone activity as compared to warehouse/distribution operations.
- The largest industries that accounted for zone activity remained the same with oil refining, automotive, electronics, pharmaceutical, and machinery/equipment the predominant sectors.
- Direct exports under zone procedures amounted to about \$78 billion (slightly down from the 2015 figure of \$84.6 billion).

- The Report also highlights the main foreign-origin products received in FTZs for warehousing and distribution operations, which include vehicles, consumer electronics, consumer products, electrical machinery, and oil and petroleum. The main foreign-origin products received in FTZs for production operations included oil and petroleum, vehicle parts, consumer electronics, pharmaceuticals, as well as machinery and equipment.

The report further summarizes the merchandise and export figures by state. For merchandise received, Texas, Louisiana, California, South Carolina, and Arizona were the top five states by value. For exports, Texas, South Carolina, Alabama, Louisiana, and Puerto Rico were the top five states by value. The report also summarizes the FTZ activity by each state, including the breakout of imported products by value, value figures, as well as the number of companies operating as FTZs in each state. The full Annual Report to Congress can be found [here](#).

Overall, as it does seem that some figures have dropped in comparison to the 2015 FTZ Board report to Congress, many companies are continuing to seek and establish FTZs as a strategic corporate decision to reduce landed costs, realize cost savings, and stay competitive in today's global market. The FTZ program was established in 1934 by the Foreign-Trade Zones Act to "expedite and encourage foreign commerce" within the United States.

Regulatory Updates

Cuba Sanctions Update

President Trump announced in June 2017 that some of the changes to Cuban sanctions made by former President Obama would be rolled back. On November 9, 2017, President Trump announced new sanctions on Cuba, effectively reinstating some of the sanctions that President Obama had eased. The administration's goal is "to channel economic activity away from the Cuban military and to encourage the government to move toward greater political and economic freedom for the Cuban people." The sanctions vary between financial, travel, and trade/commerce restrictions.

For financial transactions, there will be a "Cuba Restricted List" of entities the State Department has deemed heavily related to the Cuban military. Any new direct financial transactions with these entities by persons subject to U.S. jurisdiction will now be prohibited.

Additionally, the Department of Commerce Bureau of Industry and Security (BIS) will be implementing a general denial policy for license applications to export items for use by entities on the Cuba Restricted List. However, they do plan to simplify and expand the BIS license exception that authorizes certain license-free exports to the Cuban private sector. The goal is to continue to support free enterprise in Cuba. The remaining sanctions are related to travel, most notably that "individual people-to-people nonacademic educational travel will no longer be authorized as announced by the President."



Cote d'Ivoire Sanctions Update

Effective November 13, 2017, OFAC removed the Cote d'Ivoire Sanctions regulations from the Code of Federal Regulations. The removal of the OFAC sanctions follows the President's termination of the national emergency declaration in Cote d'Ivoire in September 2016 (see Executive Order 13739) and formal revocation of the sanctions originally implemented under Executive Order 13396 ("Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire").

Russia Sanctions Expanded: Enhanced Scrutiny of Significant Transactions

The President signed into law on August 2, 2017 the Countering America's Adversaries through Sanctions Act which codifies existing sanctions and implements new sanctions on Iran, Russia, and North Korea. Notably, the Act provides expansive authority to the executive branch to implement Russia sanctions and enables the U.S. Department of State (DOS) and U.S. Department of the Treasury to scrutinize "significant transactions" with entities associated with Russian defense or intelligence agencies, including entities that are not currently on restricted party lists. Section 231 of CAATSA requires the imposition of sanctions on persons determined to have knowingly engaged in significant transactions with persons or entities associated with the defense or intelligence services of the Russian government.

Pursuant to Section 231(d) of the Act, the DOS has identified persons that are "part of, or operating for or on behalf" the defense and intelligence services of the Russian government.² Beginning on or after 180 days after enactment, sanctions will be imposed on persons that knowingly engage in significant transactions with any of the DOS-listed entities.³

The DOS has provided additional guidance surrounding what constitutes a "significant transaction" under Section 231. Ultimately, the DOS evaluates significant transactions on a case-by-case basis and considers factors such as national security and foreign policy interests, the magnitude of the transaction (i.e., monetary value), or the significance of the transaction to the Russian defense or intelligence agencies. The DOS clarifies in its guidance that it is primarily focused on transactions involving products with only a military or intelligence end-use.⁴

Under the broad definitions of "significant transactions" under the Act, the DOS has been provided considerable flexibility in determining which transactions to scrutinize and operates with complete discretion to discourage U.S. entities from proceeding with specific sales or exports. Companies that produce or export goods and services should conduct due diligence in evaluating customers and endusers that may be associated with Russian military or intelligence agencies. Furthermore, companies that are engaging in significant transactions are encouraged to do so under the guidance of the DOS.

Commerce Guidebook on U.S. Export Controls for Commercial Space Industry

The second edition of the guidebook for U.S. export controls for the commercial space industry was released in November 2017. The guidebook, created by the DOC Office of Space Commerce and the Federal Aviation Administration (FAA) Office of Commercial Space Transportation, is intended to "provide basic information to help commercial space organizations, especially emerging entrepreneurial firms, considering business in the international market."

The guidebook is a great resource for plain-language explanations of topics such as satellite export controls, export control reform, how control lists work, how to apply for a license or use a license exemption, and helping to ensure compliance. While obviously geared toward the commercial space industry, some of these topics are relevant for any business looking to learn more about export controls.

A link to the updated guidebook can be found [here](#).

U.S. Census Bureau Guidance to Parties Engaging in Routed Export Transactions

On November 8, 2017, the U.S. Census Bureau (Census) issued a summary of recommendations to parties engaging in routed export transactions. Routed export transactions, formally defined in 15 CFR § 30.1, are generally those where a foreign buyer is facilitating an export shipment of the goods it purchased from a U.S. seller. The Census guide provides the basics of routed transactions and emphasizes collecting, maintaining, and exchanging information between the principal parties in interest. For more details, please access the Census publication [here](#).

² DOS specifies that the Guidance is not a "determination regarding the imposition of sanctions" and further clarifies that identified persons have not necessarily been included on any restricted party lists. To view a full list of the DOS designated entities, reference "CAATSA Section 231(d) Defense and Intelligence Sectors of the Government of the Russian Federation," Nonproliferation Sanctions, available on the Department of State Web site.

³ Section 231 (a) of the CAATSA indicates that the President may impose five or more sanctions identified in Section 235 of the act of persons who "knowingly engage in transactions with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation." These sanctions include, but are not limited to: EX-IM Bank restrictions, export license restrictions, loan restrictions from financial institutions, procurement restrictions from the U.S. Government, property transaction restrictions, equity and debt purchase restrictions, as well as restrictions on activities of corporate officers. See Section 235(a)(1-12) of the CAATSA, Nonproliferation Sanctions, Section 231 and 235, available on the Department of State Web site.

⁴ Please reference "Public Guidance on Sanctions with Respect to Russia's Defense and Intelligence Sectors Under Section 231 of the Countering America's Adversaries Through Sanctions Act of 2017," Nonproliferation Sanctions, available on the Department of State Web site.

CBP Extends Deadline for PSCs

CBP has announced that it will be extending the deadline for filing a Post-Summary Correction (PSC). CBP has stated that the new deadline will allow a filer to transmit a PSC within 300 days (originally 270) of the date of entry or 15 days (originally 20) before the scheduled liquidation date. The filer must transmit the PSC on or before whichever of the two aforementioned dates is earlier.

Additionally, CBP has offered clarification on filing a PSC in order to correct entry type 23 (Temporary Importation Bond or TIB). Specifically, CBP clarifies that when submitting a PSC related to a TIB entry, said PSC may only be filed in order to correct data elements of a TIB that do not change the TIB entry into another entry type. Conversely, CBP clarifies that when submitting a PSC related to a non-TIB entry, said PSC may only be filed in order to correct data elements of a TIB that do not change the non-TIB entry into a TIB entry.

User Fee Airport

Effective November 24, 2017, CBP revised the list of user fee airports to reflect the removal of user fee status for Meadows Field Airport in Bakersfield, California and the designation of user fee status for four additional airports:

- Griffiss International Airport in Rome, New York
- Van Nuys Airport in Van Nuys, California
- Cobb County Airport-McCollum Field in Kennesaw, Georgia
- Charlotte-Monroe Executive Airport in Monroe, North Carolina.

User fee airports are those airports which, while not qualifying for officially designated location as a port of entry, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States and the passengers and cargo of those aircraft.

See the full list of user fee airports at 19 CFR 122.15(b).

CBP announces increase in Merchandise Processing Fees (MPF)

CBP has announced that effective January 1, 2018, the minimum and maximum limitations for MPF will change. While the assessed rate of .3464 percent ad valorem will remain the same for formal entries, the minimum amount levied will increase from \$25 to \$25.67 and the maximum amount levied will increase from \$485 to \$497.99. For informal entries, the set fee will increase from \$2 to \$2.05. For more details, please access the [Federal Register](#) announcement of the increase.

Argentina rolls out Authorized Economic Operator (AEO) program

Effective October 30, 2017, the Government of Argentina established an Authorized Economic Operator (AEO) program pursuant to World Customs Organization (WCO) standards. Argentina joins over 60 countries that offer AEO programs.

Global Trade Transformation

How Artificial Intelligence is Transforming Global Trade

KPMG's Technology and Transformation team recently attended an "Executive Symposium on Intelligent Automation" that brought together business and technology leaders, visionary thinkers, and economists to exchange ideas, examine opportunities, and debate the future of the next business revolution.

Intelligent automation is changing the world of business; these new advanced technologies have the power to exponentially increase enterprise speeds, scales, quality, and precision; drive heightened levels of operational efficiency; and complement and augment human skills. The rampant digitization of labor means traditional ways of operating business are becoming obsolete. Smart machines now perform activities, and even make decisions, previously left exclusively to humans—and they do it faster, more accurately, and at far greater scale.

John Maynard Keynes foresaw some of these changes as far back as 1930, when he made two predictions. One was that within 100 years, our standard of living in the developed world would be four to eight times greater. Currently, it is five times higher than it was in 1930. Secondly, he predicted a 15-hour work week due to new technology. Obviously, his first prediction proved accurate, while the second one depends on how well organizations integrate human and digital labor and make the most of both.

Intelligent automation has penetrated all industries and sectors of the economy. So how is intelligent automation transforming global trade?

When it comes to trade transformation, one way that companies can stay competitive on a global scale is by automating their global trade processes via deployment of a robust Global Trade Management (GTM) system. Automation of global trade processes enables companies to react quickly to changes in the supply chain and to the regulatory environment, reduce costs, and achieve operational excellence. Meanwhile, GTM systems allow companies to achieve trade compliance and help avoid companies' exposure to potential fines and increased duties. As such, order to cash and procure to pay transactions and relevant business partners can automatically be screened against

multiple government lists and trade regulations, while leaving human factors to review any false positives or potential transactional risks.

Another time-consuming area of trade operations is classification using a harmonized tariff system code. Many GTM systems provide functionality to perform mass classification or extended search options to ease the process of classification. Even though GTM systems eliminate manual efforts associated with classifying products, a human factor is still required to make the final classification decisions.

Scenarios provided above represent examples of where artificial intelligence capabilities can be used to reduce the amount of additional human review and inputs to help ensure trade compliance. Presently, multiple software providers offer artificial intelligence technologies and cognitive platforms that replace most routine tasks by digitalizing human labor and decision-making processes. The combination of automation and artificial intelligence in its essence is the intelligent automation, and it is the foreseeable future of trade transformation.

The overall effects of intelligent automation are that jobs, work teams, processes, and functions will need to be redesigned as a result of task automation and decision enablement. These new technologies encourage humans to focus on strategies of growth, creativity, and innovation. In time, we will see that trade compliance and operational functions being automated will lead to an acceleration in trade transformation.

The decision on when to implement intelligent automation will vary. Each company is different in its organization, trade and technology maturity and, thus, might require some additional time to achieve automation. Automation is a journey, it does not happen overnight; it requires a business case and can be achieved using a phased approach taking into consideration people, processes, and the state of technology, which are the core components of intelligent automation.

Transition of the e214 to ACE

Over the last two years, operators of FTZs have been part of a transformation in the requirements for trade data on Zone transactions as a result of the federal government's system automation efforts. While the goal of the requirements is to streamline trade processes and modernize the management of FTZs, throughout the process it was found that the originally published requirements set forth by CBP and other partner government agencies (PGA) were challenging for Zone operators, as they did not conform to the unique operations of FTZs.

A 2014 Executive Order⁴ led to the adoption of the automated commercial environment (ACE) by the U.S. government for all trade transactions.⁵ Instead of the PGAs maintaining their own legacy and sometimes manual filing requirements, the ACE "Single Window" was established to allow importers and exporters alike to file all trade data through one centralized government system. The PGA "Message Set" was created as a single set of combined trade data requirements for all federal agencies import/export filing requirements to harmonize the reporting process for the entire trade community. Initially, there were problems with ACE for FTZ users, but there has been significant improvements in recent years.

The most recent improvement is the transition of the electronic 214 admission (e214) to ACE from Automated Commercial System (ACS). CBP initially had the transition to ACE scheduled for September 16, 2017, but the NAFTAZ asked CBP to delay the transition, seeing "a disturbing number of systemic problems and new issues that need to be addressed before the rollout of e214 in ACE."⁶ At the National Customs Brokers and Forwarders Association of America's (NCBFAA) annual Government Affairs Conference on September 11, 2017, CBP acting commissioner Kevin McAleenan announced that the planned transition date had been postponed until December 9, 2017.

The deployment includes e214, along with Manufacturer ID creation and statements.⁷

⁴ On February 19, 2014, President Barack Obama signed Executive Order 13659 "Streamlining the Export/Import Process for America's businesses" and directing U.S. federal agencies on development of the single-window International Trade Data System (ITDS), which likewise adopted ACE as the primary data repository and user interface. All PGAs would be required to adopt use of ACE as part of the ITDS initiative.

⁵ Until 2016, CBP operated on a legacy platform known as the Automated Commercial System (ACS) which had been initially implemented in 1984. Until recently, all importers, irrespective of whether they were also FTZ Operators or Users, were filing through a system that was quickly becoming outdated in today's quickly evolving technology-focused world. ACS was primarily intended to track all goods imported into the United States with a prominent component of ACS being the Automated Broker Interface (ABI) which allowed importers and their respective filers (e.g., customs brokers) to electronically submit required entry/summary declaration data elements to CBP. This likewise replaced a traditional paper-based approach to CBP filings. ABI and ACS were however built on an aging platform that was not readily interfacing with PGAs (e.g., the U.S. Food and Drug Administration, U.S. Environmental Protection Agency, Animal and Plant Health Inspection Service, etc.) that are tasked with reviewing certain imported products prior to entry into the United States.

⁶ NAFTAZ Statement on e214 Transition

⁷ ACE Deployment Schedule

ACE Update

As the world moves towards finding opportunities to automate business processes, the CBP has declared ACE the sole authorized electronic data interchange (EDI) in communicating daily and monthly statements for all entries except reconciliation entries. The transition to ACE clearly shows that CBP is focused on modernizing business processes affiliated to the import of shipments and is the result of several years of development and testing. The transition to ACE will be finalized January 6, 2018 and will impact companies that self-file or file via a broker. With the ACE solution, the ACS will be decommissioned. To allow businesses to begin adjusting their business processes, CBP followed a staggered transition strategy for decommissioning ACS.

To be prepared for ACS to be decommissioned, businesses have been encouraged to review and modify their business processes accordingly. Whether you self-file or file via a broker, your company should consider business changes to support this transition to ACE, which impacts both the method you communicate and the data you are required to communicate, as well as your technology and business processes.

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Conferences and Events in Trade

Where We Were:

U.S. Fashion Industry Association-Apparel Importers Trade and Transportation Conference debrief, November 15, 2017, New York, New York- KPMG recently attended the U.S. Fashion Industry Association (USFIA)'s 29th Apparel Importers Trade & Transportation Conference on November 15, 2017 at Tribeca Rooftop in New York, New York. Industry

professionals gathered to hear the latest in trade, sourcing, and transportation policies and politics impacting the retail industry. Such topics discussed were specifically related to the fashion industry, how artificial intelligence is used in consumer markets, social compliance, evolution of sourcing strategies, and advancements in shipment monitoring and tracking technologies.

There were multiple panel discussions throughout the day focusing on the latest in trade policy and politics from Washington. Brenda Smith, executive assistant commissioner, CBP Office of Trade, shared insights on trade enforcement and discussed how CBP works with the international trade community through the Centers of Excellence and Expertise (CEE).

CBP East Coast Trade Symposium debrief, December 5–6, 2017, Atlanta, Georgia – KPMG's Trade & Customs team attended the CBP Symposium in Atlanta on December 5–6, 2017. CBP promised to address Section 321 de minimis entries, facilitation/enforcement, interagency import safety, and the Border Interagency Executive Council (BIEC).

In his opening remarks, CBP's acting commissioner Kevin McAleenan expressed CBP's intention of providing clear guidance on Section 321 de minimis during this symposium but that NAFTA renegotiations would need to "mature" before any guidance is provided. One of the contentious issues has been the low value threshold for each country, with the U.S. looking to increase Canada's \$15 low value threshold to something closer to the U.S. \$800 threshold. The U.S. goal in these talks is to pursue "borderwide initiatives" that facilitate trade across the Canada and Mexico borders, including low-value de minimis entries.



On the enforcement front, Elaine Duke, the acting secretary for DHS, highlighted forced labor and other unfair trade practices and indicated that the focus in the coming year will be on enforcement of these areas.

In addition, CBP discussed its coordination efforts with PGAs and BIEC on ACE development/deployment and other trade enforcement efforts around ADD/CVD entries and seizures/penalties.

One of the key sessions of the conference addressed Trade Facilitation and Trade Enforcement Act (TFTEA) priorities for CBP. During the session, CBP primarily covered the Act's stated objectives of protecting economic security through trade enforcement, collaborating with the private sector through direct engagement, and streamlining the Customs' modernization process. According to CBP, ADD/CVD has become a heightened concern. Officers are noticing "many of the same ADD/CVD players with new plays," and the greatest ADD/CVD risks relate to incorrect classifications, illegal transshipments, and incorrect valuations.

CBP indicated that educating and partnering with the trade community regarding intellectual property rights is a priority of TFTEA, as many violations are being discovered in "bulk shipments" and are becoming increasingly difficult for CBP to enforce. A prime takeaway of the session is that the integration of TFTEA principles into trade compliance programs will be essential for companies seeking a safe and secure supply chain and in order for CBP to reach its stated goals.

Lastly, CBP held a session on emerging technology as it relates to trade enforcement. In an effort to stay current on the technological advancements of Silicon Valley, CBP currently employs a working group task force to pilot trade transformation programs and test cases. This involves improvement in data management, program efficiency, as well as data integrity and privacy. The use of block chain was widely discussed, and CBP has targeted the following initiatives for modernization: PGA certificates/permits, tracking FTA progress, bonded movement tracking, and cargo release.

[Come See the KPMG T&C Team:](#)

- 2018 NAFTAZ Fundamentals of FTZs Seminar, January 7–8, 2018 New Orleans, Louisiana
- Outdoor Industry Association-Adding Supply Chain Value through Foreign Trade Zones (FTZs) and Duty Drawback, January 25, 2018 Denver, Colorado
- NAFTAZ 2018 Legislative Summit, February 13, 2018 Washington, DC
- Society for International Affairs Spring Conference, March 8–9, 2018 Denver, Colorado
- Georgetown University Law Center 39th Annual International Trade Update, March 8–9, 2018 Washington, DC
- 2018 ICPA Annual Conference, March 11–14 San Diego, California
- American Conference Institute-7th Advanced Industry Forum on Global Encryption, Cloud and Cyber Export Controls, March 28–29, 2018 San Francisco, California

KPMG Events and Webcasts

KPMG Trade & Customs Update, November 28, 2017 San Francisco, California

KPMG Trade & Customs and Thomson Reuters hosted a seminar in KPMG's San Francisco office on November 28, 2017 and invited local clients.

KPMG Trade & Customs consultants provided a general overview of the First Sale for Export program as well as its requirements, other considerations, and leading practices, while Thomson Reuters presented on transforming global trade management processes through classification innovation.

For more information, please contact KPMG Trade & Customs.

- Thomson Reuters, 2017 Global Trade Survey Results Webcast hosted by Thomson Reuters on November 30, 2017, featuring Doug Zuvich, KPMG senior partner and global practice leader. See a replay of the Webcast [here](#).
- KPMG TaxWatch Webcast: Establishing a Leading Export Compliance Program-Webcast hosted on, December 4, 2017
- KPMG Trade & Customs Update, December 12, 2017 Philadelphia, Pennsylvania
- KPMG Trade & Customs Update, March 6, 2018 Tysons Corner, Virginia

TaxNewsFlash Alerts – Trade & Customs

TaxNewsFlash alerts provide summaries of the latest regulatory and legislative developments being reported by KPMG International member firms. To learn more, go to: [Trade & Customs-TaxNewsFlash](#).

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Contact us

For more information, please contact any of the professionals listed below or visit our [Trade & Customs Web site](#).

Douglas Zuvich

Partner and Global Practice Leader

T: 312-665-1022

E: dzuvich@kpmg.com

Andrew Siciliano

Partner and U.S. Practice Leader

T: 631-425-6057

E: asiciliano@kpmg.com

John L. McLoughlin

Principal and East Coast Leader

T: 267-256-2614

E: jlmcloughlin@kpmg.com

Luis (Lou) Abad

Principal, Washington National Tax

T: 212-954-3094

E: labad@kpmg.com

Irina Vaysfeld

Principal

T: 212-872-2973

E: ivaysfeld@kpmg.com

Robert Waldrop

Principal

T: 212-954-8117

E: rwaldrop@kpmg.com

Christopher Young

Principal

T: 312-665-3229

E: christopheryoung@kpmg.com

George Zaharatos

Principal

T: 404-222-3292

E: gzaharatos@kpmg.com

Amie Ahanchian

Managing Director

T: 202-533-3247

E: aahanchian@kpmg.com

Gisele Belotto

Managing Director

T: 305-913-2779

E: gbelotto@kpmg.com

Andy Doornaert

Managing Director

T: 313-230-3080

E: adoornaert@kpmg.com

Jessica Libby

Managing Director

T: 612-305-5533

E: jlubby@kpmg.com

Heidi Mustonen

Managing Director

T: 415-963-5571

E: hmustonen@kpmg.com

Web sites:

— [Trade & Customs Services](#)

— [Insights on Trade & Customs](#)



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