

SPC&B Update

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FTA Claims**



California Prop 65 Actions Continue

Since the beginning of 2014, there have been a number of Proposition 65 settlements reached relating to lead, phthalates, and other chemicals in a wide range of products. Among the products covered are flasks, headphone cords, pet products, products with vinyl covers, stationery items, products containing foam and polyurethane foam, and synthetic leather products. It remains critical for companies that distribute consumer products in the state of California to maintain robust compliance and testing programs, in order to avoid facing legal action by one of the consumer watchdogs, who continue to actively pursue such cases.

For further information on Proposition 65 settlements or on implementing a testing program, please contact Gail T. Cumins at gcumins@spcblaw.com, Alli Baron at abaron@spcblaw.com, or Donna Shira at dshira@spcblaw.com, or call us at 212-425-0055.

CBP Publishes Guidance on Post Importation FTA Claims

As we advised in our Update of July 9, 2014, Customs & Border Protection (CBP) recently changed its position with respect to post-importation claims under certain Free Trade Agreements (FTAs) and Special Trade Programs. In this regard, for programs that did not specify a method of filing post-importation claims (e.g., NAFTA and CAFTA, which require that such claims be filed under Section 520(d)), CBP traditionally allowed importers to file either Post Entry Amendments (PEAs) or Post Summary Corrections (PSCs) prior to liquidation or protests after liquidation. CBP has now determined that allowing protests in this situation is contrary to decisions reached by the Court of International Trade. Accordingly, CBP will no longer allow protests to be filed and will only accept PEAs or PSCs which must be filed prior to liquidation. In fact, importers have already started receiving protest denials as a result of the changed policy.

It is more than likely that one or more importers will challenge CBP's new position, either through litigation or lobbying efforts. If your company has received denied protests or receives such denials in the future, you may wish to take an active role in challenging CBP or at least to take action to protect the company's rights in the event that CBP reverses its position or delays its implementation.

In its guidance document, CBP provided the following chart indicating the type of post-importation claims that will be accepted under the various FTAs and Special Trade Programs:

Section 520(d)	PEA/PSC
CAFTA-DR	AGOA
NAFTA	Civil Aircraft Agreement
Chile FTA	Jordan FTA
Oman FTA	Australia FTA
Colombia FTA	GSP
Panama TPA	Morocco FTA
Korea FTA	Bahrain FTA
Peru TPA	Insular Possessions
	Pharmaceutical Products Agreement
	CBERA
	Israel FTA
	CBTPA
	Uruguay Round Concession on
	Intermediate Chemicals for Dyes
	Singapore FTA

For further information on how these rule changes may affect your company's FTA or Special Trade Program claims, please contact Gail T. Cumins at gcumins@spcblaw.com, Donna Shira at dshira@spcblaw.com, or call us at 212-425-0055.

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