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Closing Time: The Government Shutdown's Impact on Key Trade Agencies

With no Cinderella story last night, as of October 1, 2013 at 12:01 AM, the Federal Government is officially shut down. As a result, all “non-essential” federal workers will be furloughed and federal agencies cannot continue their routine operations. However, not all agency operations will cease. Agencies can continue to provide essential services and those funded outside the appropriation process. While the length of the shutdown still remains uncertain, there will be a clear impact on trade operations both domestically and around the globe.

The shutdown will have varying effects on each government agency. For importers, Customs and Border Protection (CBP) will retain up to 90 percent of its existing employees, while for exporters, the Commerce Department’s Bureau of Industry and Security (BIS) will retain only 40 percent of its personnel.

U.S. Customs and Border Protection (CBP)

The following examples are illustrative of U.S. import trade-related activities that will continue during a lapse of appropriations:

- Passenger processing and cargo inspection functions at ports of entry;
- CBP revenue collection; and
- Securing the nation’s border by maintaining criminal law enforcement operations, including drug and illegal alien interdiction.

CBP further indicates non-exempt activities that will be curtailed during the shutdown:

- Planning (strategic, business, budgetary, etc.), research and development, auditing, and training activities;
- Most policy functions, administrative as well as programmatic, unless those functions can be justified by an exception; and
- Regulatory, legislative, public, and intergovernmental affairs.

Food and Drug Administration (FDA)

FDA will continue to review imports offered for entry into the U.S., but will cease certain safety activities, including some compliance and enforcement activities, as well as the monitoring of imports. Agency staff who conduct sample analyses on products will continue to work, which is good news for companies whose products have been or may be detained by FDA on import pending the outcome of sample testing.

Department of Commerce

Bureau of Industry and Security (BIS): The Department of Commerce’s contingency plan outlines BIS activities that will continue during a funding lapse. Commerce notes that all Office of Export Enforcement (OEE) personnel are considered essential for national security operations. Therefore, the agency will continue investigations, prosecutions, and other activities with DOD, DOJ, FBI, ICE, and other law enforcement and intelligence agencies. In terms of export administration, BIS will keep certain minimal activities in operation, such as:

- Processing export licenses essential to protecting the U.S. national security;
- Evaluating transactions involving U.S. export-controlled items to ensure they are exported in accordance with export control requirements;
- Drafting amendments to the Export Administration Regulations to address emergency foreign policy issues that warrant changes to dual-use export control policies;

- Negotiating changes to international export control lists; and
- Hosting international inspectors pursuant to U.S. non-proliferation treaty obligations.

International Trade Administration (ITA): ITA would retain only 3 percent of its staff during the shutdown. ITA has six officers who are based overseas to conduct pre-licensing and post-shipment checks. According to Commerce's contingency plan, these officers will continue to perform these functions.

Department of State

The Department of State is less clear on which activities will remain unaffected. However, the agency will continue to perform functions necessary for "emergencies" involving the safety of human life or the protection of property, including the conduct of foreign affairs and other activities essential to national security. The agency will be minimally staffed for the duration of the shutdown.

Department of the Treasury, Office of Foreign Assets Control (OFAC)

OFAC will continue to perform the following functions:

- Administering the Specially Designated Nationals (SDN) list and enforce economic and trade sanctions;
- Implementation of and administering any new sanctions through newly issued Executive Orders; and
- Limited handling of incoming inquiries via its telephone hotline.

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Please contact any of the attorneys in our **International Trade and Customs** or **Dietary Supplements, Cosmetics and Functional Foods** groups for assistance or if you have any questions on how the government shutdown may impact your business.