

How US Customs and Border Protection Will Enforce the Consumer Product Safety Improvement Act of 2008

Understanding Customs Compliance and Enforcement

Sydney H. Mintzer
Partner, Government & Global Trade

+1 202 263 3866
smintzer@mayerbrown.com

Erika Z. Jones
Partner, Litigation

+1 202 263 3232
ejones@mayerbrown.com

July 2009

Topics for Discussion

CPSIA and Import Safety: An Overview

- CPSIA Certification and Testing Requirements
- CBP's Authority to Investigate
- Enforcement at the Border
- Post-Entry Audits
- Penalties and Mitigation
- Basic Elements of Customs Compliance
- CPSIA Update and Forecast

CPSIA and Import Safety: An Overview

- Consumer Product Safety Improvement Act
- Signed into Law August 14, 2008
- Significantly strengthens CPSC's ability to address the safety of imported consumer products
 - Adds new certification and testing requirements
 - Adds new penalties and other remedies for importing noncompliant or uncertified consumer goods
- Implementation will require substantial coordination with Customs and Border Protection (CBP)

New Certification and Testing Requirements

- All consumer products subject to CPSC standard, regulation or ban must be tested and compliance must be certified on a written Certificate of Conformity (COC)
 - COC must accompany the product shipment
- All children's products must be tested by an accredited, independent third-party laboratory
 - Test lab and date of test must be identified on COC
 - CPSC accredited labs are listed on CPSC's website:
www.cpsc.gov

Stay of Enforcement

- CPSC granted a stay of enforcement of COC requirement for certain products until February 10, 2010
- Stay relieves need for test reports and for COC issuance
- Actual compliance still required!
- Stay applicable to most (not all) new standards in CPSIA
 - Examples: lead substrate; phthalates
- Stay not applicable to pre-CPSIA standards
 - Example: lead paint

New Penalties and Remedies

- Failure to furnish a COC
 - Civil penalties for importer
 - Presumption of destruction of noncompliant imported products (including missing COC)
 - Export of noncompliant products prohibited in most cases
- Furnishing a false COC can result in civil and/or criminal penalties for importer

Who Must Certify

- CPSC adopted a rule to simplify the statutory certification requirements:
 - For products manufactured abroad, only the importer must certify
 - For products manufactured domestically in the US, only the domestic manufacturer must certify
- Rule found at 16 CFR Part 1110
- Published November 18, 2008
 - 73 Fed. Reg. 68328

Certificate Requirements

- Certificate must be in the English Language
- Certificate may be electronic format if web-accessible
- Certificate must identify manufacturer or importer
 - Full mailing address and phone number required
- Certificate must identify the product (or lot) covered by the certificate
- Certificate must contain the date (month/year) and place (city/country) of manufacture

Certificate Requirements (cont.)

- Certificate must identify each CPSC standard to which the certificate applies by CPSC citation
 - Example: 16 C.F.R. 1512, bicycle standard or Section 101 of CPSIA, Lead substrate standard
- Certificate must identify date (month/year) and place (city/country) where product was tested
 - If third-party lab, name, address and phone number required

Certificate Requirements (cont.)

- Certificate must identify where test records are kept
 - Custodian's name (can be title)
 - Email address
 - Full Mailing address
 - Telephone number
- CPSC recommends retaining test records for three years
 - Some specific CPSC standards already require three year record retention

Availability of Certificates

- A certificate must “accompany” each shipment of covered products
- A certificate must also be “furnished” to each distributor or retailer of covered products
- An electronic certificate satisfies these requirements if --
 - It is created in advance of importation and there is a means to verify the date of its creation:
 - It uniquely identifies the covered products;
 - It is accessible through the internet or other electronic means;
 - It is available to CPSC and CBP at time of importation.

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CBP's Authority to Investigate

- Enforcement at the Border
- Post-Entry Audits
- Penalties and Mitigation
- Basic Elements of Customs Compliance
- CPSIA Update and Forecast

CBP Overview

- US Consumer Product Safety Commission
 - 500 employees (mostly in Washington, DC)
 - Highly centralized structure
 - Enforces seven laws
- US Customs and Border Protection
 - 50,000 employees (in Washington, DC; 327 Ports of Entry)
 - Highly decentralized structure
 - Enforces thousands of laws

CBP Overview (cont.)

- Mandate on Trade
 - Collecting import duties, taxes and fees;
 - Protecting US businesses from theft of intellectual property and unfair trade practices;
 - Enforcing trade laws related to admissibility;
 - Maintaining export controls; and
 - Protecting US agricultural resources via inspection activities at the ports of entry.

CBP Overview (cont.)

- CBP's Mandate re CPSC
 - “Muscle” at the border
 - Experts in border enforcement and audit
 - Creating synergies with CPSC for joint action
 - Certificates becoming “customs documents”
 - Subject to same scrutiny as traditional customs documents – GSP certificates, 7501s, etc.
 - Same compliance requirements and penalty risks

Enforcement at the Border

- Examination – Can occur after release of merchandise
- Demand for Return
 - Can occur up to date that merchandise is liquidated
 - Failure to comply – liquidated damages (value of merch)
- Seizure

Enforcement at the Border (cont.)

Top Commodities Seized

Percentage Change by Value – FY 2008 vs. FY 2007

FY 2008 Commodity	FY 2008 Domestic Value	% of Total Value	FY 2007 Domestic Value	Difference FY 08 vs. FY 07	% Increase or Decrease
Footwear	\$ 102,316,577	38%	\$ 77,781,415	\$ 24,535,162	31%
Handbags/Wallets/Backpacks	\$ 29,609,053	11%	\$ 14,214,304	\$ 15,394,749	108%
Pharmaceuticals	\$ 28,106,578	10%	\$ 11,137,578	\$ 16,969,000	152%
Wearing Apparel	\$ 25,119,580	9%	\$ 27,005,914	\$ (1,886,334)	-7%
Consumer Electronics/Electrical Articles	\$ 22,997,685	8%	\$ 16,041,694	\$ 6,955,991	43%
Sunglasses/Parts	\$ 7,919,385	3%	\$ 3,951,758	\$ 3,967,627	100%
Computers/Technology Components	\$ 7,589,534	3%	\$ 9,336,893	\$ (1,747,359)	-18%
Perfumes/Colognes	\$ 6,716,735	2%	\$ 1,201,193	\$ 5,515,542	459%
Cigarettes	\$ 6,444,649	2%	\$ 583,349	\$ 5,861,300	1004%
Media	\$ 5,967,332	2%	\$ 7,884,152	\$ (1,916,820)	-24%
All Other Commodities	\$ 29,941,771	11%	\$ 27,616,127	\$ 2,325,644	8%
Total Domestic Value of All IPR Seizures	\$ 272,728,879		\$ 196,754,377	\$ 75,974,502	38%
Total Number of Seizures	14,992		13,657	1,335	9%

Source: CBP

Enforcement at the Border (cont.)

Top Safety and Security Commodities

Percentage Change by Value – FY 2008 vs. FY 2007

FY 2008 Commodity	FY 2008 Domestic Value	% of Total Value	FY 2007 Domestic Value	Difference FY 08 vs. FY 07	% Increase or Decrease
Pharmaceuticals	\$ 28,106,578	45%	\$ 11,137,578	\$ 16,969,000	152%
Sunglasses	\$ 7,919,375	13%	\$ 3,951,758	\$ 3,967,617	100%
Perfumes/Colognes	\$ 6,716,735	11%	\$ 1,201,193	\$ 5,515,542	459%
Cigarettes	\$ 6,444,649	10%	\$ 583,349	\$ 5,861,300	1005%
Electrical Articles	\$ 5,020,361	8%	\$ 4,087,060	\$ 933,301	23%
Critical Technology Components	\$ 4,742,175	8%	\$ 4,491,316	\$ 250,859	6%
Batteries	\$ 1,806,821	3%	\$ 913,428	\$ 893,393	98%
Transportation/Parts	\$ 621,242	1%	\$ 845,094	\$ (223,852)	-26%
All Others	\$ 1,157,536	2%	\$ 681,848	\$ 475,688	70%
Total Domestic Value	\$ 62,535,472		\$ 27,892,624	\$ 34,642,848	124%
Total Number of Seizures	1,950		1,295	655	51%

Source: CBP

Enforcement at the Border (cont.)

Top Trading Partners

Percentage Change by Value – FY 2008 vs. FY 2007

Trading Partners FY 2008	FY 2008 Domestic Value	Percent of Total Value	FY 2007 Domestic Value	Difference FY08 vs. FY 07	% Increase or Decrease
China	\$ 221,661,579	81%	\$ 158,082,597	\$ 63,578,982	40%
India	\$ 16,258,368	6%	\$ 855,231	\$ 15,403,137	1801%
Hong Kong	\$ 13,433,606	5%	\$ 12,729,121	\$ 704,485	5%
Taiwan	\$ 2,631,980	1%	\$ 3,454,048	\$ (822,068)	23%
Korea	\$ 1,028,348	<1%	\$ 902,904	\$ 125,444	13%
Dominican Republic	\$ 942,128	<1%	\$ 23,261	\$ 918,867	3950%
Pakistan	\$ 780,109	<1%	\$ 2,530,545	\$ 1,750,436	69%
Vietnam	\$ 747,567	<1%	\$ 483,821	\$ 263,746	54%
United Arab Emirates	\$ 658,626	<1%	\$ 372,932	\$ 285,694	76%
Indonesia	\$ 649,066	<1%	\$ 96,753	\$ 552,313	570%
All Others	\$ 13,937,502	5%	\$ 17,223,164	\$ (3,285,662)	-19%
Total Domestic Value of All IPR Seizures	\$ 272,728,879		\$ 196,754,377	\$ 75,974,502	38%
Total Number of Seizures	14,992		13,657	1,335	9%

Source: CBP

Post-Entry Audits

- Indicators that Entries Might be Reviewed by CBP
 - Direct Contact from Customs
 - Official “Request for Information”
 - Significant Importer or Increasing Rapidly
 - Programs/Related Party Suppliers

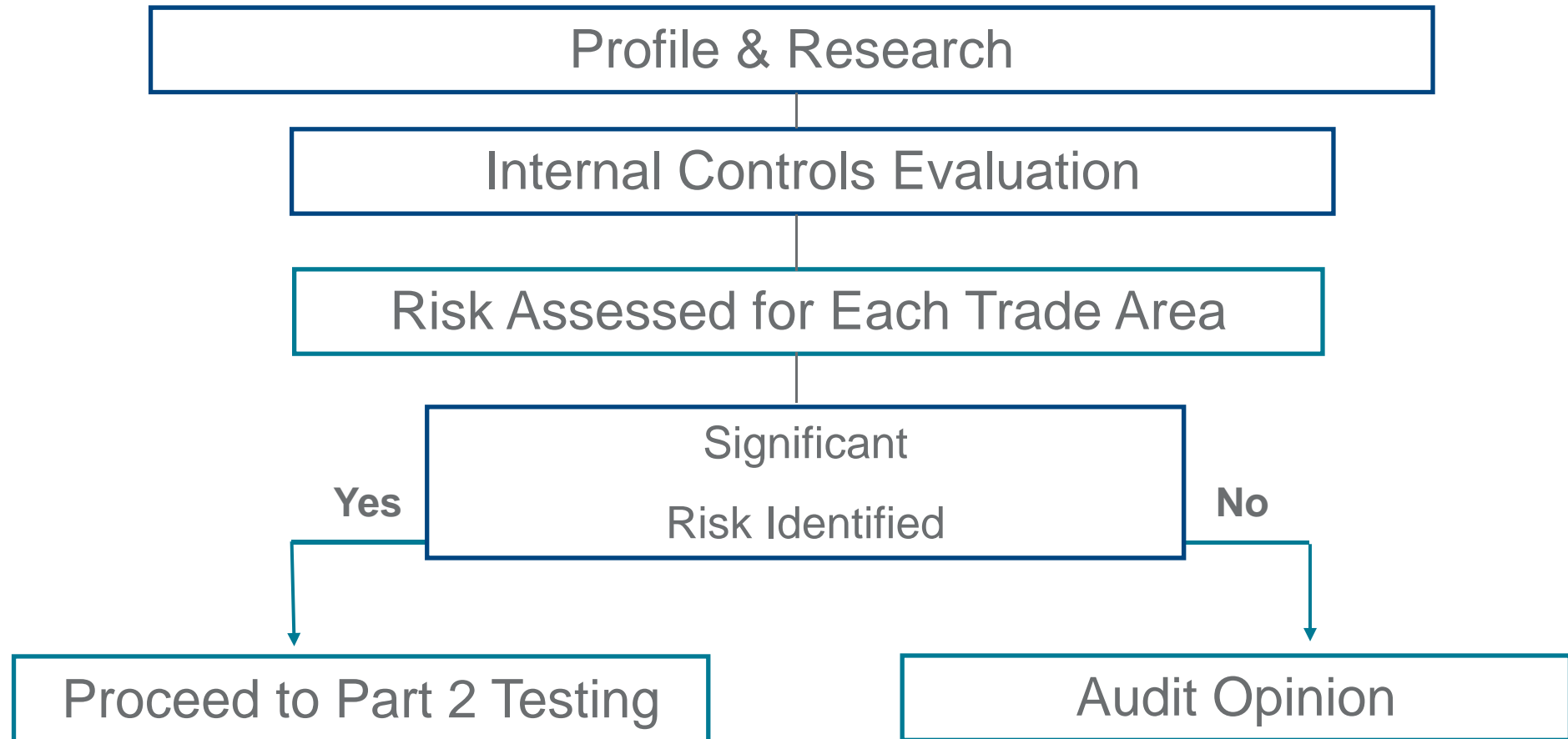
Post-Entry Audits (cont.)

- CF 28 – CBP’s Initial Request
 - Information Gathering
 - “What procedures are in place to handle safety requirements and recall?”

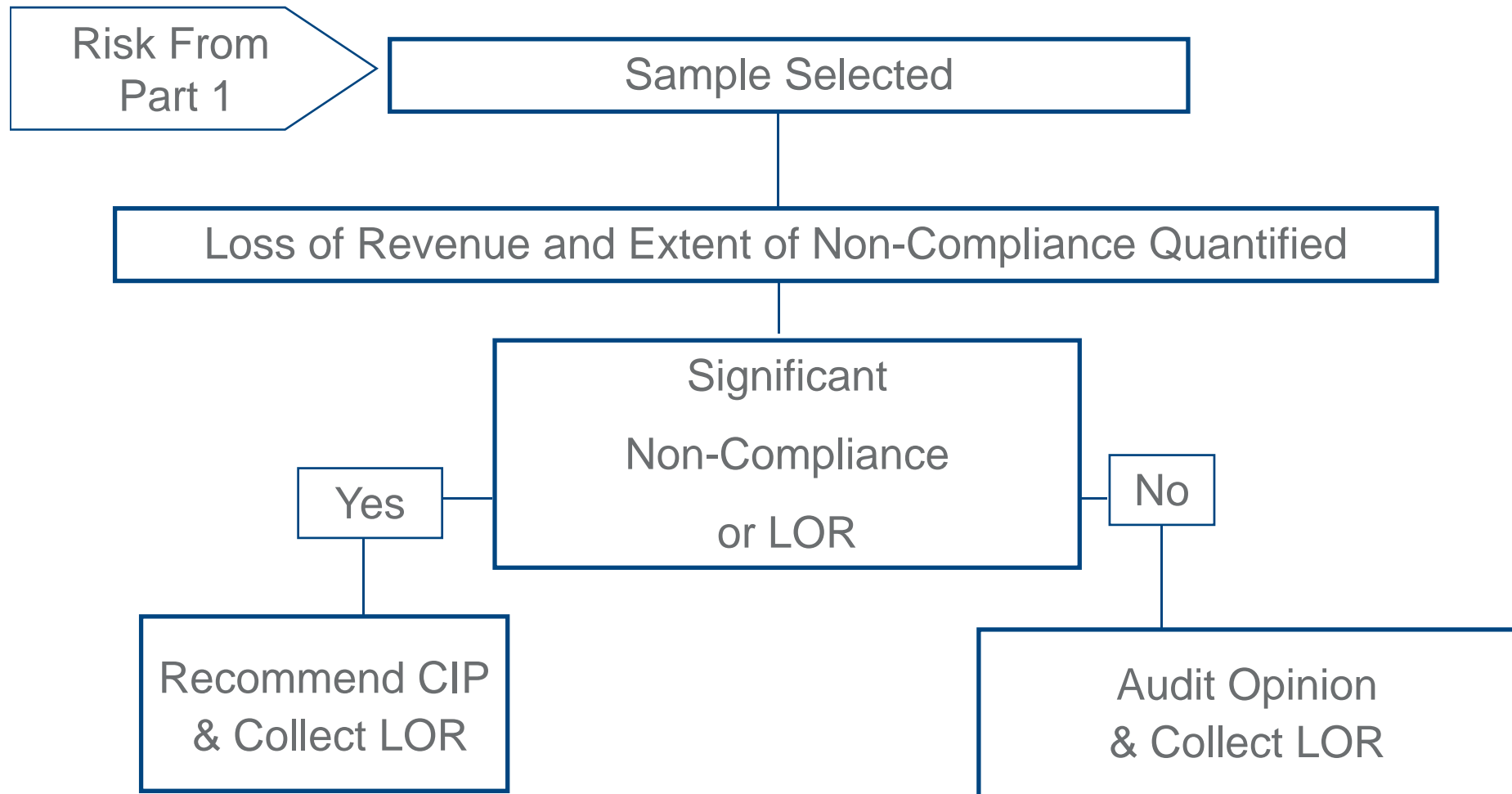
Post-Entry Audits (cont.)

- Red Flags
 - Insufficiently documented internal controls for adequately identifying products under Act
 - No evidence of due diligence of foreign manufacturer
 - Company officials lack knowledge of Act certification requirements
 - Failure to cooperate with CBP requests
 - Numerous foreign suppliers that require certification
 - Suppliers from suspect countries
 - High turnover among key company personnel
 - No “system”

Post-Entry Audits



Post-Entry Audits (cont.)



Post-Entry Audits (cont.)

- Time and Distraction
 - Can Take 1 Year or More
 - Requires Multiple Visits from Customs Staff
 - Stress on Internal Resources
 - Audit Environment

Penalties and Mitigation

- Penalty Exposure – Can Result from Focused Assessment or Other Regulatory Audit or Investigation
 - Imposition Depends on Level of Reasonable Care Exhibited and Significance of Errors
 - Penalties for Negligence Range from 0.5 Times to 2 Times the Actual Loss of Duty (on Dutiable Items)
 - Penalties for Negligence Range from 5% to 20% of Dutiable Value When No Actual Duty Loss (0 Duty Tariffs)
 - Customs Has Discretion on Ultimate Penalty Amount

Penalties and Mitigation (cont.)

- Risk Mitigation
 - Self-Assessment
 - Importer Self-Assessment Program/ISA Product Safety Pilot

Penalties and Mitigation (cont.)

- How to Qualify for ISA Product Safety Pilot:
 - Active ISA member
 - Complete an ISA-PS/CPSC Questionnaire
 - Maintain internal control system that ensures product safety
 - Notify CBP of any major organizational changes that may affect the importer's product safety controls
 - Submit annual written notification to CBP of Compliance
- Benefits Provided by CPSC:
 - CPSC point of contact
 - Access to special training concerning compliance
 - Opportunity to expand program to multiple Importers of Record (IOR)
 - CPSC may allow products to be destroyed by the ISA-PS participant in lieu of requesting redelivery to CBP of the product

Basic Elements of Compliance

- Fundamental Concept – Importers Must Demonstrate Reasonable Care
- Ultimate Responsibility on Importer
- Policies and Procedures
 - Importers must have written policies
 - Must explain application of procedures in practice

Basic Elements of Compliance (cont.)

- Recordkeeping
- Know the Rules – “I Didn’t Know” is No Excuse
- Seek Customs Clarification
- Personnel Requirements
- Related Party Suppliers Expected to Cooperate

Basic Elements of Compliance (cont.)

- Best Practices of Global Customs Compliance
 - Corporate Commitment
 - Management Involvement
 - Policies and Procedures
 - Communication
 - Broker Management
 - Recordkeeping

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CPSIA Update and Forecast

CPSIA Update and Forecast

- Inez Tenenbaum has been sworn in as Chairman of the Commission
 - Two or more Commissioners expected later this year
 - Robert Adler has been nominated
 - One additional person expected to be nominated soon
- Import Safety will be a high priority of her tenure

Recent CPSC Decisions of Note

- ATV
 - Lead exclusion denied; stay of enforcement until May 1, 2011
- Bicycles
 - Exclusion denied; stay of enforcement until July 1, 2011
- Ballpoint Pens
 - Exclusion denied; interpretation provided much relief
- Durable Infant/Toddler Goods
 - Proposed registration card requirements

Expected Actions

- “Inaccessibility” guidance rule expected in August
- Finalized third-party lab accreditation expected in August
- Civil Penalty factors rule expected in August
 - Penalties increase substantially on August 14, 2009
- Lead Standards Become More Stringent in August
 - Paint standard: 90 ppm
 - Substrate standard: 300 ppm

Expected Actions (cont.)

- Tracking label requirement takes effect August 14, 2009
 - Guidance may be issued but rule is self-executing
- Testing frequency rule expected in November
 - Will likely include requirements for retesting when product is redesigned or materials are changed
- Stay of Enforcement of Certificate of Conformity Ends February 10, 2010
 - Expect CBP to begin requiring COCs for products offered for importation on or after that date

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