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Freedom Isn't Free



Thank You, Veterans

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Trade Community Still Waiting for Final "10+2" Regulations

By Sandler Travis & Rosenberg PA

There is increasing speculation that a final rule setting forth the additional data elements that U.S. Customs and Border Protection wants from importers and vessel carriers may not be issued before the end of the year. CBP officials had said they expected to publish the so-called "10+2" rule no later than this fall, and some observers had expected it to be unveiled at the annual Trade Symposium that took place in Washington, D.C., last week. It now appears, however, that the rule has been delayed because CBP, the Department of Homeland Security and the Office of Management and Budget are doing a more detailed analysis of the costs it would impose.

A Sept. 16 letter to the OMB from dozens of industry groups asserted that CBP's initial cost-benefit analysis of the 10+2 rule "grossly underestimated the impact on industry and failed to consider many of the costs that manufacturers will shoulder." The organizations estimated that the rule could have a collective impact of more than \$20 billion a year, which is significantly higher than CBP projections. House Small Business Committee Chair Nydia Velazquez told the OMB in a separate letter Sept. 9 that costs associated with the rule will include the expenses of having to maintain larger inventories, store containers longer at ports and make upgrades and modifications to information technology and data processing systems. A bipartisan group of lawmakers added Aug. 1 that the rule could result in cargo delays of two to five days.

As a result, CBP is under pressure to take a more gradual approach to implementing the 10+2 requirements. In an Oct. 27 letter, the chairman and ranking members of the House Ways and Means Committee and Trade Subcommittee said CBP should first issue an interim final rule and pilot test it with a representative group of volunteer importers. Only after soliciting public comments and making appropriate changes should CBP finalize and phase in the new regulations for all importers. The lawmakers also said CBP should provide "meaningful benefits" in relation to the 10+2 rule for companies participating in the Customs-Trade Partnership Against Terrorism.

There has been a certain amount of pushback from CBP, however. At the recent Trade Symposium Deputy Commissioner Jay Ahern pointed out that the burdens associated with the 10+2 rule are not as bad as they could be. "You've got 100 percent scanning lurking out there and July 2012 [the date by which Congress wants that goal to be met] is not all that far away," he said, according to *American Shipper*. "We've got to demonstrate to Congress and to others that a 10+2 type of solution really negates the need" for 100 percent scanning.



First Report on Chinese Textile and Apparel Imports Expected

Dec. 1 - By Sandler Travis & Rosenberg PA

The first report by the International Trade Commission on imports of Chinese textiles and apparel will be made available Dec. 1, the ITC has announced. This report is one of several requested by House Ways and Means Committee Chairman Charles Rangel last

month to help the committee determine whether a more comprehensive investigation of such imports is appropriate.

Rangel's Oct. 9 letter to the ITC stated that in order for the committee to have accurate and timely information regarding imports of textiles and apparel from China, which some fear may surge after the existing safeguard quotas expire Dec. 31, the ITC should provide statistical reports every two weeks on the volume, value, unit value and import market share of products covered by those quotas. Data will be compiled for each covered product at both the three-digit textile/apparel category level and the 10-digit Harmonized Tariff Schedule subheading level.

The ITC states that it will provide preliminary data from U.S. Customs and Border Protection once every two weeks and post this information on its Web site. The first report will be submitted Dec. 1 and will include a historical compilation of the volume, value, unit value and import market share of the covered articles dating from Jan. 1, 2003, to the most recent month available. The ITC will also provide reports with the final data from the Census Bureau as it becomes available. A compilation of monthly Census data will be published on an annual basis. These reports will be provided until the committee terminates or amends its request.



Strategy Will Guide CBP's Efforts to Facilitate Trade - USCBP

Washington - U.S. Customs and Border Protection Commissioner W. Ralph Basham today announced the publication of the CBP Trade Strategy at the annual CBP Trade Symposium in



Washington, D.C. The trade strategy is the first published document that explains how CBP will accomplish its mission of facilitating legitimate trade.

“The Trade Strategy complements our national strategies for gaining operational control of the borders at and between the ports of entry. It will guide our efforts toward a system that is swift, safe and secure for legitimate imports entering the U.S. marketplace.”

The CBP Trade Strategy covers the next five years, when the volume of imports and the complexity of trade laws are expected to grow. In fiscal year 2008, CBP processed imports worth \$2.2 trillion and collected \$32 billion in revenue. ([CBP Trade Strategy \(pdf - 409 KB.\)](#))

“In the face of this explosion in trade, it’s imperative that we have a strategy focused on achieving the balance between trade and security issues. A strategy that is built on priority trade issues and guides our trade mission in the field,” said Commissioner Basham.

The four major goals of the trade strategy are to:

- Facilitate legitimate trade and ensure compliance
- Enforce U.S. trade laws and collect accurate revenue
- Advance national and economic security
- Intensify modernization of CBP’s trade processes

The Trade Strategy reflects CBP’s layered approach to trade facilitation and enforcement, which expands pre-entry and post-release compliance verification programs to reduce unnecessary delays for legitimate imports at the borders.

Speaking to the trade at the symposium, Commissioner Basham said, “Many of you in this room have contributed to it. This strategy is forward looking and brings together all our trade priorities in one document.

So that we—CBP—and you, the trade—know where we are going—and we are not relying on hope to get us there. It’s a strategy that relies on sharing information, sharing resources, and sharing a common commitment to protect this country—and grow our economy.”

Please visit the Trade page on CBP.gov for more information on CBP’s Trade Strategy. ([Trade](#))

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of our nation's borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws.

CBP TRADE STRATEGY:

http://cbp.gov/xp/cgov/newsroom/news_releases/archives/2008_news_releases/oct_2008/10302008.xml





USDA Approves Final Regulations for the 2008 Through 2012 Cotton Programs

WASHINGTON, October 30, 2008 - The Commodity Credit Corporation (CCC) today approved new regulations for implementing cotton programs authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that will be published soon in the Federal Register. These regulations govern several programs for the 2008 through 2012 crops of upland and extra-long staple (ELS) cotton, specifically marketing assistance loans (MAL) and loan deficiency payments (LDP); recourse seed cotton loans; and the ELS cotton competitiveness payments. The regulations also provide for a new program of economic assistance payments to domestic cotton users for upland cotton bales used starting August 1, 2008.

These regulations implement new statutory requirements for the ongoing MAL and LDP programs. Starting with the 2008 crop, loan rate adjustments for location are eliminated for upland cotton, and other minor rate adjustments for leaf and micronaire are incorporated. The regulations also revise the calculation of the Adjusted World Price (AWP) transportation adjustment, and reduce by 10-percent the maximum rates used for calculating any storage payments for the 2008 through 2011 crops. This reduction of storage-payment rates does not apply to repayments of any outstanding 2007 crop loan obligations. A 20-percent reduction from 2006 rates in maximum storage-payment rates will be effective for redemptions of the 2012 crop.

The 2008 Farm Bill authorizes the reduction of the upland cotton AWP for any United States premium factor for cotton qualities higher than Middling 1 3/32-inch. This change allows for an adjustment for periods when loan premiums exceed market premiums. The CCC will announce and implement this weekly adjustment, termed the "fine count adjustment" (FCA), for loan repayments processed starting Friday, Oct. 31. The FCA will be calculated and announced separately for each crop of upland cotton.

Starting with the upland cotton AWP that becomes effective Friday, Oct. 31, CCC will adjust the price by the average cost to market upland cotton to the Far East, including average transportation costs as determined from survey results. This adjustment will replace use of a 52-week rolling average calculation method. The new regulations provide that this transportation adjustment and the FCA also apply to loan redemption calculations of outstanding 2007-crop upland cotton.

For further information, contact Gene Rosera, Price Support Division, Farm Service Agency, telephone: (202) 720-8481 or fax: (202) 690-3307; e-mail: gene.rosera@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).



Trade Notes: India LDC Program; Peru-EFTA Trade Pact By Sandler Travis & Rosenberg PA

India Offers Duty-Free Imports from Least-Developed Countries. India has unveiled a new program under which it will offer duty-free treatment to imports of most products from least-developed countries. According to an Oct. 29 press release from the government's Press Information Bureau, the Duty Free Tariff Preference scheme "grants duty-free access on 94% of India's total

tariff lines” and will be “implemented over a period of five years.” Covered products will include cotton, apparel, cocoa, aluminum and copper ore, cashews, fish and non-industrial diamonds. The press release states that the program will be open to all 49 countries considered LDCs and that seven have already been approved to participate.



CBP Outlines Achievements, Best Practices Under C-TPAT

By Sandler Travis & Rosenberg PA

At its recent Trade Symposium in Washington, D.C., U.S. Customs and Border Protection officials gave a presentation on what has been achieved to date under the Customs-Trade Partnership Against Terrorism and the best practices that CBP has identified among C-TPAT participants.

Achievements

CBP provided the following statistics on its efforts under C-TPAT.

- There are 8,647 certified C-TPAT partners, including 4,082 importers, 2,311 carriers, 755 brokers, 758 foreign manufacturers, 688 consolidators and 53 marine port authorities and terminal operators.
- 9,521 validations have been completed, including 7,710 initial validations and 1,811 re-validations.
- Initial validations declined from 2,561 in 2007 to 1,401 in 2008, while re-validations increased from 575 to 1,220.
- 411 participants (including 213 highway carriers) have been suspended from C-TPAT and 271 (including 114 highway carriers) have been removed.
- There are 267 Tier 3 importers.
- There are seven C-TPAT field offices with a total of 195 staff.
- CBP has mutual recognition arrangements with New Zealand, Canada and Jordan; mutual recognition projects with Australia, the European Union, Japan and Singapore; technical assistance projects with Malaysia, Mexico, the Philippines and Guatemala; and capacity building training programs with Ghana, Brazil and Kenya.

Best Practices

CBP listed the following as confirmed best practices for C-TPAT participants.

- maintaining a consistent C-TPAT point of contact
- regular monitoring of both C-TPAT Web site and portal account
- security profile maintenance beyond required annual self-assessment
- follow-up questionnaires and inquiries to business partners and providers (outside of initial effort)
- notification to CBP and assigned supply chain security specialist in the event of any security breach or anomaly
- inspection of providers’ facilities by participant personnel
- not allowing double brokering within the supply chain
- using only known providers within the supply chain (specifically other C-TPAT providers)
- establishing C-TPAT committees, working groups or regular meetings and having providers participate in supply chain security meetings or councils
- making C-TPAT participation part of the overall supply chain operation and not a singular program
- random audits by management of processes outside of normal established procedures
- keeping documentation of all supply chain incidents, anomalies or issues for future reference



CBP Drops Exporter Declaration Requirement for Jadeite/Ruby Imports from Countries Other than Burma – By Broker Power, Inc.

U.S. Customs and Border Protection has issued a notice which amends its earlier instructions on the implementation of a phased certification scheme for imports of jadeite and rubies mined in or extracted from a country other than Burma, and imports of articles of jewelry containing such jadeite or rubies.

The importation of jadeite and rubies mined in or extracted from Burma, and articles of jewelry containing such jadeite or rubies, continues to be prohibited (unless it meets one of two exceptions).

(On October 2, 2008, CBP announced a phased certification scheme for enforcing the Tom Lantos Block Burmese JADE Act of 2008 (JADE Act) for countries other than Burma.

Phase I of CBP’s scheme began on September 27, 2008 and required an importer certification and an exporter certification for imports of jadeite and rubies mined in or extracted from a country other than Burma, and imports of articles of jewelry containing such jadeite or rubies. The exporter certification consisted of a written exporter declaration and certain recordkeeping requirements, with CBP requiring a paper entry for enforcement purposes. CBP had also granted a 30-day grace period (through October 26, 2008) from the enforcement of these certifications.)

Exporter Declaration No Longer Required - CBP has amended the certification scheme to no longer require an exporter declaration. Instead, the exporter certification requirement of this scheme will be administered through existing invoice requirements, as explained below.

"Responsible Employee of Exporter" Must be Named on the Invoice - According to CBP, Proclamation 8294 and the JADE Act require the foreign exporter of non-Burmese covered articles to have measures in place having substantially the same effect as a system of verifiable controls demonstrating that any jadeite or rubies contained in exports to the U.S. were not mined in or extracted from Burma.

As an interim measure, importers and exporters will be required to ensure that the “responsible employee of the exporter” named on any invoices for these articles has the knowledge, or can readily obtain the knowledge, regarding the exporters’ new obligations for these transactions.

To support this requirement, CBP cites 19 CFR Part 141 (Entry of merchandise), Section 141.86 (Contents of invoices and general requirements), paragraph (j), which states that “each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or can readily obtain knowledge, of the transaction.”

(Note that in CBP’s October 2, 2008 notice, it stated that within the next few months, relevant government agencies would determine which documents may be needed to support further verification of export controls, and that it was CBP’s intent to explore a certification process which would proceed in an automated fashion.)

Enforced Compliance Began on October 26, 2008 - While the effective date of the JADE Act was September 27, 2008, CBP had granted the trade a 30-day grace period from enforcement. However, this 30-day period has ended and CBP states that it began enforced compliance on October 26, 2008.

Importer Certification and Exemptions from Certifications Remain Unchanged

The importer certification requirement for imports of jadeite and rubies mined in or extracted from a country other than Burma, and imports of articles of jewelry containing such jadeite or rubies remains unchanged and consists of the use of new Harmonized Tariff (HTS) breakouts and certain recordkeeping requirements. In addition, the two exemptions from the provisions of the JADE Act are unchanged.

CBP notice (posted 11/03/08) available at http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/cargo_summary/laws/public_law/jade_act.ctt/jade_act.pdf



FMC Announces LA/LB Cities File Amendments to Marine Terminal Agreement Covering CTP and ICF – By Broker Power Inc.

The Federal Maritime Commission has announced that the cities of Long Beach and Los Angeles have filed a number of amendments to the Los Angeles and Long Beach Marine Terminal Agreement (FMC Agreement No. 201196).

An FMC synopsis indicates that these amendments (No. 001) reflect the:

- addition of a definition for “Early Replacement Drayage Trucks,”
- amendment of the definition of “Program Funds,”
- simplification of the wording regarding the installation of RFID (Radio Frequency Identification Device) or OCR (Optical Character Recognition) readers,
- extension of the deadline for access for pre-1989 model year drayage trucks that are registered as being replaced by Early Replacement Drayage Trucks,
- clarification of the size of containers subject to clean truck fee,
- addition of an exception for defense cargo, and
- clarification that the Ports may assess more than one type of concession fee.

Comments on the amendments are due within ten days of November 5, 2008.

(Agreement No. 201196 took effect September 30, 2008 and establishes the terms and conditions under which drayage trucks are permitted access to the LA/LB Ports for the purpose of: (a) improving Port-related transportation infrastructure; (b) increasing cargo movement efficiencies and Port capacities; (c) improving the safety and security of Port terminals and properties; and (d) decreasing Port-related air pollution emissions in the San Pedro Bay area. The Agreement also covers the Clean Trucks Program (CTP) and the Infrastructure Container Fee (ICF), among other things.

One source opined that Los Angeles and Long Beach filed Agreement No. 201196 in order to have something in place when they implemented the CTP, etc. (since issues regarding Agreement No. 201170-001 have not yet been resolved).

On October 29, 2008, the FMC determined by a 2-1 vote that implementation of certain portions of the CTP under FMC Agreement No. 201170-001, the LA/LB Port Infrastructure and Environmental Programs Cooperative Working Agreement, are likely to produce an unreasonable increase in transportation cost or unreasonable reduction in service by a reduction in competition, and filed a lawsuit asking for a permanent injunction to remove the anti-competitive aspects of the agreement, including the employer-driver mandate.

On September 24, 2008, the FMC initiated an investigation to determine whether certain LA/LB port practices violate Section 10 of the 1984 Shipping Act.

In June 2008, the FMC “cleared” the LA/LB Port Marine Terminal Operator Administration and Implementation Agreement (No. 201178), but stated that future FMC actions were not precluded.



*** HAPPY VETERAN'S DAY ***



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