



# Parker & Company Worldwide

**Trade News Quarterly August 2009**

## **Personnel update**

Parker would like to announce employment of our new licensed broker. Antonio Rivera, Antonio (Tony) comes to Parker & Company from UPS Customs Brokerage. After UPS Customs Brokerage closed their operation in Brownsville, Parker & Company has employed Tony Rivera. Tony has over 15 years as a licensed broker practicing in the port of Brownsville. After initial transitioning of accounts which Tony brought on to the Brownsville office, Tony now is full time Sales and Administration manager for the Pharr office. Tony plans to meet with all Pharr customers over the next few weeks and has been a valuable addition to the Pharr office. Parker currently has 4 licensed brokers.

## **10 + 2 Security filing update**

Parker & Company continues to file the voluntary but highly recommended ISF (international security filing) for our customers that have expressed an interest to file. We continue to outreach to those customers that are not filing and highly recommend customers contact your local office manager to begin the process of setting up data communications for filing. Effective January of 2010 filing will be mandatory and importers would be subject to a \$5000 penalty for non-filing and also experience the possibility of a no load situation with their carriers overseas.

Parker & Company has a standard format screen for use by overseas booking party to provide the data that is required to be filed 24 hours before loading and departure of the vessel from overseas ports. With differences in time zones worldwide Parker is encouraging filers to have data available at least 3 days before expiration of the filing. Currently customs is accepting filing even after departure date. To allow all parties to test data and begin to comply with the upcoming deadline.

10+2 and the Bonding Requirement

January 12, 2009

*Please note that a similar notice was sent to you on December 22, 2008... But due to the holiday timing, we're sending this important message a second time just in case it was missed!*

## **Important Dates for 10+2**

As you know, U.S. Customs and Border Protection (CBP) published the 10+2 [interim final rule](#) on November 25, 2008. The effective date for informed compliance is January 26, 2009, and enforced compliance will commence January 26, 2010, unless CBP determines that it is necessary to delay it. Public comments are due June 1, 2009, and must meet certain criteria to be considered. Please contact us if you would like further details on the criteria.

From January 26, 2009 to January 26, 2010, CBP will be evaluating any compliance difficulties the trade may experience as a result of 10+2. This "informed compliance" approach notwithstanding, CBP reserves the right to take enforcement action when an importer is not achieving "satisfactory progress" or making a "good faith effort to comply" during this period.

### **CBP Amends Interim Final Rule on Importer Security Filing**

U.S. Customs and Border Protection has made several amendments to its Nov. 25, 2008, interim final rule concerning the importer security filing (10+2). CBP states that because the rule's regulatory text was inadvertently silent regarding the time frame for transmitting an ISF for shipments intended to be transported in-bond ISF-5, for immediate exportation or transportation and exportation, this text is now being revised to clarify that the appropriate data elements must be submitted no later than 24 hours before the cargo is laden aboard the vessel at the foreign port.

### **Bonding Requirements**

When implemented, 19 CFR 149.5(b) requires that the Importer Security Filing (ISF) importer, or his ISF agent, must possess one of several Customs bonds. The Customs bond ensures CBP's ability to enforce compliance through the assessment of liquidated damages of \$5,000 per violation. While the CBP 301 form itself is not changing, the related bond regulations are being expanded as of January 26, 2009, so that these bonds will automatically cover ISF liabilities:

- Activity Code 1 - Basic Importation and Entry Bond (19 CFR 113.62)
- Activity Code 2 - Basic Custodial Bond (113.63)
- Activity Code 3 - International Carrier Bond (113.64)
- Activity Code 4 - Foreign Trade Zone Operator Bond (113.73)

The formula to determine the bond amount for continuous bonds under each of the above activity codes is not expected to change. Further, principals with such bonds will not need to file new bonds or file a bond rider to cover ISF changes.

CBP is also adding an Importer Security Filing continuous bond as Appendix (D) to 19 CFR 113 as an "ISF only" bonding option. The interim final rule does not indicate the required amount for the new "Appendix D" bond, and in the meantime CBP is expected to provide guidance on calculating the amount of this type of bond as needed.

Single transaction bonds (STBs) may be accepted for an ISF, but their use will be evaluated by CBP on a "case by case basis." CBP has not yet determined an ISF STB process or amount, but is expected to provide guidance as needed.

### **Whose Bond should be used for the ISF?**

Either the bond of the ISF importer or the bond of the ISF importer's agent submitting the ISF may be used. The most likely type of 'agent' to be in a position of submitting an ISF on behalf of an ISF importer is a customs broker. Each time a customs broker files an ISF under its own bond it increases its exposure to liability for liquidated damages. However, it is also true that not having a continuous bond of its own on file may leave the customs broker at a competitive disadvantage if a client requires such a service and the broker believes offering it is a sound business decision.

Do you have a continuous bond? Is your company prepared to take on the additional liability exposure if you decide to secure an importer's ISF? What criteria will you use to qualify an importing client for ISF filings under your own bond versus the importer's? Just as most of your clients' entries today are placed under your clients' importer bond and not your own, we anticipate that this will generally be the most prudent course of action for your company with regard to the ISF.

### **Parker & Company is updating IT Equipment and Back up Systems**

1. Items completed:
  - a. Backup power generator to run main frame in event of power outage over 2 hours completed in September 2008.
  - b. Bar code reading equipment installed for put away and pick in Brownsville and Pharr completed in Fall 2008. Laredo install Fall 2009

## 2. Items currently active:

- a. Replacement servers for Brownsville, Pharr & Laredo. Purpose – increased storage, processing speed, reliability (aging servers) and improved backup. Status – servers are on order. Timeframe – 6-8 weeks
- b. Change email hosting from AT&T to Rackspace. Purpose – improved spam filtering, control of company white lists & blacklists, increased amount of email server storage, server backup of PC email & contacts in the event of internal PC failure. Microsoft Exchange. Timeframe – currently active on this project and will be completed in the next 1-3 weeks.

## 3. Projects in the planning stage:

- a. Backup ASP (AS400) with Xtheta. Purpose - Would allow for filing of entries in the event our AS400 is unavailable via internet from offices or homes. Backup internet service providers. Purpose – backup for emails, AS400/entries, etc. Time Frame 2 months
- b. Replacement Firewalls – Purpose – Replace aging technology to keep current with current threats & also to improve reliability.

### **Customs Authorization Is Part of Congressional Agenda**

Perhaps the most important legislation of direct interest to brokers this year will be customs authorization legislation, a bill that has been "in development" for at least two years. Look for movement, first in the Senate and later in the House, perhaps as early as Memorial Day. The focus will be on re-balancing CBP by restoring CBP's focus on commercial operations.

Items of interest in the bill:

- Comprehensive drawback modernization, expanded personnel resources, Intellectual property, and Public access to policymaking through better CBP public outreach.

NCBFAA has been working hard to ensure that the custom broker and freight forwarder community will be benefited by new legislation. Additionally, there are several late entrants into the process from the trade community with a pot pourri of ideas: some good, some not so good. We will be actively addressing those issues.

### **New Trade Training Available for All ACE Portal Users**

CBP has sent out a CSMS announcing new web-based training for Multi-Modal Manifest (MMM) and Entry Summary and Account Revenue (ESAR) Enhancements. The message [http://apps.cbp.gov/csms/csms.asp?srch\\_argv=09-000166&srctype=all&opt=1](http://apps.cbp.gov/csms/csms.asp?srch_argv=09-000166&srctype=all&opt=1) sent out April 7, highlights the changes that will occur in both reporting capabilities and portal functionality including forms that may be available to importers over the portal.

Listed below are the topics included in the web based training (WBT) application, as well as the recommended audience. The WBT provides extensive training on the new enhancements, which will be deployed on April 12.

- Lesson 1: ACE Introduction – ALL ACE Accounts
- Lesson 2: Portal Navigation – ALL ACE Accounts
- Lesson 3: Ocean Conveyance – Ocean Carrier Accounts
- Lesson 4: In Bond Authorization – Ocean, Rail and Truck Carrier Accounts, & Brokers Preparing In-Bonds
- Lesson 5: Mode of Communication – Broker, Carrier and Importer Accounts
- Lesson 6: Declarations - Broker and Importer Accounts
- Lesson 7: CBP Forms - Broker and Importer Accounts

- Lesson 8: New ACE Reports – Broker & Importer Accounts

To take the WBT, visit the “Training and Reference Guides” section on [www.cbp.gov/modernization](http://www.cbp.gov/modernization). The URL for the ACE Web Based Training and the required username and password are: [https://nemo.customs.gov/ace\\_online/](https://nemo.customs.gov/ace_online/), username: user01 and password: 1Password.

**New Container ship service Port of Brownsville** - PORT TO PORT INTERNATIONAL to begin calling the Port of Brownsville, TX with regular liner service from US Gulf to Mexico and Central America. Port to Port International is pleased to announce that it will begin calling the Port of Brownsville, Texas in early August with a regular liner service between the Port of Brownsville and Progreso every 15days, Yucatan Mexico. Central American port calls will be added in the near future.

“Port to Port International is very pleased to inaugurate regular liner service from Brownsville to Mexico and Central America, which will help us expand our market base and improve service to our customers in Brownsville and the Gulf,” said Anabel Panayotti, President of Port to Port International.

The service will specialize in door-to-door container moves and also carry break-bulk cargo. This new service will draw cargo from the South of Texas and Northeast of Mexico to Progreso, Mexico and ports in Central America, with sailings every 10 days. The first vessel M/V Stella Maris,,starts service between Brownsville and Progreso Yucatan Mexico, The vessel is a small container ship but perfect for start-up service at the port. The vessel can make quick round trips to and from foreign ports in the Gulf and the Caribbean. Vessel has a capacity of 136 TEUs with two cargo holds for break bulk cargos. Reefer service is available. Contact Steve Muschenheim [stevemus@parker-logistics.com](mailto:stevemus@parker-logistics.com) or David Dubois [ddubois@parker-logistics.com](mailto:ddubois@parker-logistics.com) for booking and or sailing information.

### **Parker & Company ISO-9000 update**

Parker & Company completed our ISO-9000 Quality service system recertification performed by DNV our long standing audit and certification partner. All three offices were audited with no major findings in our quality systems during June and we were recertified as a qualifying company for **ISO-9000:2008**. I would like to congratulate all management and employees for maintaining our quality service system.

### **Lacey Act Import Declaration Now Required for Certain Wood Products**

The first phase of enforcement of the new Lacey Act import declaration requirement for plants and plant products went into effect May 1. [Subsequent phases](#) are scheduled to be rolled out every six months. U.S. Customs and Border Protection recently posted to its Web site guidance on complying with this requirement.

**Covered Products.** As of May 1, imports of the following products must accompanied by an import declaration (form PPQ 505) containing the scientific name of the plant from which they were obtained, the value of the importation, the quantity of the plant and the name of the country from which the plant was harvested.

- fuel wood (HTSUS 4401)
- wood in the rough (HTSUS 4403)
- hoopwood; poles, piles, stakes (HTSUS 4404)
- railway or tramway sleepers (HTSUS 4406)
- wood sawn or chipped lengthwise (HTSUS 4407)
- sheets for veneering (HTSUS 4408)
- wood continuously shaped (HTSUS 4409)
- tools, tool handles, broom handles (HTSUS 4417)
- builders' joinery and carpentry of wood (HTSUS 4418)

**Expedited Release.** The government began May 1 a pilot program for those entities currently participating in Automated Line Release or Border Release Advance Screening and Selectivity whose products require a Lacey Act declaration during the current phase of enforcement. Under this pilot, participants must choose whether or not to remain active in the expedited program. If a participant opts to be removed, no further action is necessary and the C4 code will be inactivated

effective June 1. Those who opt to remain in the expedited release program must complete the following two-step process.

- The participant must file with the Department of Agriculture an advance estimated PPQ 505 that includes all required data elements. The genus, species, value and quantity fields should be an estimation of the participant's planned imports during the next calendar month. The estimated PPQ 505 must be filed on or before the 15th day of the month prior to the reporting period; e.g., the first estimated PPQ 505 will cover expedited release shipments planned for June and will be due by May 15.
- The participant must file with the USDA, within 15 days after the end of the month, a reconciliation that provides information on the actual shipments made during the previous month. The deadline for the first reconciliation is July 15. The USDA will make the format of the reconciliation available at a later date.

This process must be completed monthly during the pilot. The U.S. government will rely on the collected data in its reports to Congress and in determining possible refinements and extensions to enlarge the process and make it less burdensome for all involved.

**FDA Revises Regulations on Prior Notice for Food Imports - FDA States That Final Rule Contains Significant Changes from Interim Rule** - The Food and Drug Administration has issued a final rule that makes a number of changes to its regulations on the submission of prior notice for food that is imported or offered for import into the U.S. The **final rule will be effective May 6, 2009** (180 days after Nov. 7, the date on which the rule was published in the *Federal Register*) and replaces the Interim Final Rule.

**Operational Changes:**

- Removes the requirement that the identity of the anticipated border crossing within the port of arrival be provided in the prior notice
- Removes the requirement to provide the 6 digit Harmonized Tariff Schedule number in the prior notice
- **Requires** the **registration number** of the manufacturer (or the full address of the manufacturer and a reason) in **all** circumstances

In the interim final rule, a registration number is not required for a facility associated with an article of food if the article is imported or offered for import for transshipment, storage, and export, or further manipulation and export. FDA has removed this from the final rule

- The final rule will require the PN to include the name and full address of the shipper, if the shipper is different from the manufacturer (in order to eliminate duplicative requirements). If the address of the shipper is a registered facility, the submitter may also submit the registration number of the shipper's registered facility

**EPA Fines Company for Improper Imports of Pesticides**

The Environmental Protection Agency announced May 14 that a company has agreed to pay \$21,840 to settle charges that it imported pesticides without filing notices of arrival as required under the Federal Insecticide, Fungicide and Rodenticide Act.

Companies must submit detailed information on the NOA form to allow the EPA to determine if the pesticide is approved for use in the U.S. or meets one of the few allowable exemptions. Products not registered with the EPA for use in the U.S. are denied entry and destroyed by U.S. Customs and Border Protection or immediately exported back to their country of origin under CBP supervision.

The EPA will not approve pesticide imports unless the product being imported has been tested to show that it will not pose an unreasonable risk when used according to directions. The agency also makes sure that pesticide labels provide consumers with necessary information to use the products safely. Pesticides that have been registered will have an EPA registration number on the label.

**NCBFAA Voices Strong Concerns About ACE Funding Cuts** - The Obama Administration is proposing to cut funding for the Automated Commercial Environment (ACE) by \$49 million in the Customs and Border Protection (CBP) FY 2010 budget, prompting NCBFAA President Mary Jo Muoio to voice the industry's strong concerns in a [letter to members of the House and Senate](#) Appropriations Subcommittee on Homeland Security.

"ACE is one of the government's few technology success stories," wrote President Muoio, "Everything

that matters at the border depends on the early completion of ACE. Whether we are trying to expedite trade, block tainted food products, intercept defective toys, seize counterfeit parts, detect antidumping violations, protect against radiological/ biological weapons – ACE provides the technology and the tools necessary to do all this in a way that does not stop the flow of trade.”

The NCBFAA President told legislators “the longer it takes to roll out the remaining features of ACE, the more expensive it becomes. Until ACE is completed, the agency and the private sector both must operate on two systems – ACE and its predecessor ACS (Automated Commercial System).... And for every year that goes by, the cost of providing life-support to ACS mounts, as do the accompanying inefficiencies when an outdated system is prolonged in this way.”

President Muoio urged appropriators to restore full funding for ACE, reminding them that “it was not so long ago that a former Customs Commissioner challenged our industry to ‘automate or perish.’ Not only did we take the challenge, but we quickly surpassed the government’s ability in this area. As an industry, we have developed a superior capability to move, track, analyze and manipulate data. The ACE/ITDS project gives the government the opportunity to keep up with industry’s progress and to join the realm of current business processes.”

**U.S., Canada Discuss Possibility of Shared Border Facilities** - U.S. and Canadian officials met in Ottawa May 27 to discuss management of their common border. With respect to customs issues, the two sides said only that they would explore the possibility of sharing border facilities, equipment and technology. They also agreed on a framework for cross-border operations during and following an emergency.

### **Handle with Care: 5 Ways You Can Reduce Damaged Shipments**

According to a recent study, trucks move almost **\$5 trillion** worth of goods every year. As a shipper, are you doing everything you can do to protect your shipments from damage?

Here are five tips every transportation and logistics manager should know about protecting your freight:

#### **Hangovers cause headaches.**

Many shippers don’t consider the risk of damage to their shipment when they leave pieces hanging over the edges of pallets. Using pallets of adequate size decreases the risk of outside pieces being damaged and increases structural integrity for the entire skid, especially when goods have been stacked. It also reduces the chances you’ll experience headaches as a result of damaged shipments.

#### **Pad and protect.**

Use protective measures such as corner protectors or layers of padding around and between easily damaged goods such as sheet metal. Taking the time to do so now will save you from frustration in the future.

#### **Heavy-to-light makes it right.**

When stacking goods on a pallet, place the heaviest pieces on the bottom layer and work upward with progressively lighter pieces. This will reduce the risk of crushed goods.

#### **Don’t over-pack or over-stack.**

Don’t exceed the capacity of your boxes or pallets—break down your shipment into smaller pieces and/or more pallets if necessary. The added shipping cost will be well worth it when your goods arrive without any damage.

#### **Strap it and wrap it.**

In instances where several pieces are placed together on one pallet, the likelihood of those goods falling and becoming damaged is high—unless you secure them with straps and/or shrink-wrap. Both are quick, easy and cost-effective measures to make sure a pothole doesn’t send your goods tumbling.

Please contact Don Fitzwater [dfitz@parker-logistics.com](mailto:dfitz@parker-logistics.com) if you would like to review any experiences you have had with bad packaging for recommendations

**Passport Requirement Takes Effect For Land, Sea Travel** - DHS reminded travelers that beginning June 1; U.S. citizens need a passport to enter the country from Canada, Mexico and the Caribbean. The passport requirement is part of the Western Hemisphere Travel Initiative (WHTI), developed in 2004 to

strengthen U.S. border security. The requirement has been in place since early 2007 for airline travelers entering the U.S. from neighboring countries. The passport requirement for land and sea entry was originally scheduled to take effect January 1, 2008, but was delayed after WHTI triggered a massive backup in passport applications here in the U.S. and an outcry from Border States that wanted more time to implement and educate travelers about the change.

**Proposal to Increase Harbor Maintenance Fee 350%** - By David Murphy, Esq. - The recently introduced Making Opportunities Via Efficient and More Effective National Transportation (MOVEMENT) Act of 2009 (HR 2355)[1][1] proposes to raise the Harbor Maintenance Fee (HMF) from 0.125% to 0.4375%. If enacted into law, the effect of this fee increase could be significant. For example, for imported merchandise valued at \$500,000, the HMF would jump from about \$625 to \$2187.50. There is currently no cap on the amount of HMF payable and the new legislation does not propose to create one.

First proposed in 2008, the current legislation seeks to increase the rate of the HMF and expand its application. Since the mid-1980's, HMF has been assessed on merchandise arriving via ocean carrier at 0.125% of the cargo's value unloaded at most U.S. ports. If passed, the Act would increase the fee to 0.4375%. **In addition, goods arriving after unloading at a foreign port (in Mexico or Canada) would be assessed a fee of 0.3125% when entered into the U.S. (Goods originating in Canada or Mexico are exempt.)** This could cause foreign goods arriving at in-land and land-border ports which were previously exempt from the HMF to be subject to the increased fee structure.

**Customs Brokers Oppose Effort to Raise Harbor Maintenance Tax** - The National Customs Brokers and Forwarders Association of America has registered "strong opposition" to a [House bill](#) that would nearly triple the Harbor Maintenance Tax in an effort to generate about \$2.7 billion a year for freight infrastructure improvement projects.

#### **U.S., Mexico seek common customs form -**

The United States and Mexico committed Monday to expand collaborative efforts to increase <sup>Napolitano</sup> security along the border while easing the flow of legitimate travel and trade between the two countries. The shared border management approach includes the goal of creating a common customs entry document.

Soon after taking the reins of government in January, the Obama administration began increasing law enforcement efforts on the Southwest border to help the Mexican government combat drug cartels bent on intimidation and prevent the violence from spilling over into U.S. border communities. In addition to providing financial and intelligence assistance to Mexican law enforcement agencies, the U.S. effort has involved extra resources to focus on inspecting outbound travelers and cargo shipments for cash and weapons that fortify the drug warlords.

U.S. Homeland Security Secretary Janet Napolitano and Augustin Carstens, Mexico's Minister of Finance and Public Credit, signed a Letter of Intent in Washington to:

- Create a framework for establishing Port Security Management Committees.
- Develop a joint implementation plan for building up technical and human capacity for improved border management.
- Increase trade facilitation through information sharing and a harmonized customs clearance process.

The document essentially states the two countries intend to update and enhance a 2007 bilateral strategic plan between Customs and Border Protection, Immigration and Customs Enforcement, and Mexico Customs.

**Mexico Mid-Term Election: Results Recap** - Voters went to the polls on July 5th and the results reflected the country's changing political mood. The Revolutionary Party of Mexico (PRI) reemerged as the leading political force in the House of Representatives ousting the PAN party who has held the majority for the last 12 years. Additionally, they have regained the control of two state governorships in Queretaro and San Luis Potosi.

Preliminary results and exit polls indicate that the PRI received approximately 35% of the vote, while the PAN party received 27% of the vote. As a result, the PRI gained between 238 and 244 seats, almost

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doubling the previous showing of 104 seats, while the PAN party now has between 141 and 149 seats, significantly below the 175 seats currently held in congress. The remaining 500 congressional seats will be divided between lesser parties, such as the Green Party.

### **Containers with Any Amount of Cargo Residue must be manifested and Entered**

U.S. Customs and Border Protection have recently indicated that cargo containers with any residue of cargo must be manifested and entered in compliance with all customs laws. CBP made this statement in connection with its modification of ruling HQ 113129, in which it had held that a steel container qualifying as an instrument of international traffic and filled with a chemical when exported could be entered as empty when imported back into the U.S. even if a residue of that chemical remained in the container. CBP is now modifying this ruling, effective Aug. 16, to state that re-imported containers with chemical residues should not be entered or manifested as empty and that the chemical residue contained should be classified, entered and manifested.

CBP states that it received numerous comments on its notice of proposed ruling modification seeking clarification as to whether this modification applies only to steel containers and chemicals. In response, CBP states that it is not only modifying HQ 113129 but also any other ruling not specifically identified that is contrary to the determination set forth in this modification. Specifically, containers with cargo, regardless of the amount of the cargo, will need to be manifested and entered in compliance with all customs laws.

CBP explained that an empty container is just that, empty, and that there is no *de minimis* allowance. Containers with cargo residue inside are not actually empty and therefore not in compliance with the advance cargo information transmission requirements under 19 CFR 123.91 and 123.92. They are also not in compliance with the requirement to make entry pursuant to 19 CFR 141.4 because they are not merely empty instruments of international trade. CBP states that this lack of compliance is not only a security risk to the U.S. but also a potential risk to the health and safety of CBP officers unaware of the volume or contents of the containers they are encountering. CBP's revenue collections responsibilities are also affected by such lack of compliance.

The ruling requester in HQ 113129 had offered to quantify the amount of chemicals upon importation and enter the chemical residue as U.S. goods returned under HTSUS chapter 98. CBP states that this is the more accurate procedure for the subject residual chemicals to be entered. Since the exact amount of the residual chemical may not be known at the time the advance cargo information is required to be transmitted, the importer may estimate the amount when providing that information to the carrier for transmitting to CBP. Additionally, the same estimated amount should be used at the time of entry of the chemicals. If a more precise amount is obtained after arrival, the entry should be amended.

**FTC Settles with Manufacturer on Misleading Made in USA Claims** - The Federal Trade Commission announced July 20 that a manufacturer of computer and TV screen magnifiers and other devices to enhance vision has agreed to settle charges that it falsely claimed its products were made in the U.S. According to the FTC's 1997 U.S. Origin Claims Enforcement Policy Statement, for a product to be advertised or labeled as "Made in U.S.A" it must be "all or virtually all" made in the U.S.; i.e., all significant parts and processing must be of U.S. origin and the product should contain no (or negligible) foreign content. In the case at issue, the FTC states, because several of the company's products contain a significant portion of foreign components, the "Made in the U.S.A" claim is deceptive.

### **CBP Says More Vigilance Needed by C-TPAT Members, Outlines Additional Measures**

U.S. Customs and Border Protection has issued a security bulletin urging Customs-Trade Partnership Against Terrorism members to increase their vigilance over their supply chains and outlining various measures such companies can take to meet that objective. CBP states that while this bulletin is focused on operations along the U.S.-Mexico border, all C-TPAT members are highly encouraged to review their established security processes at this time.

The bulletin explains that during the past few months there have been several large narcotics seizures involving commercial shipments linked to C-TPAT members. These seizures have occurred across the entire southwest border and involved both dry goods and fresh produce. In many instances C-TPAT members were utilizing the services of non-C-TPAT service providers.

CBP has identified two primary factors that have enabled these supply chain security breaches: failing to follow established security procedures, and lack of corporate oversight ultimately resulting in significant levels of subversion of established supply chain security procedures via internal conspiracies. CBP is reminding members that they are expected to use C-TPAT partners to the extent possible and to conduct extensive screening of non-C-TPAT partners. Given the current threat from Mexico, the bulletin states, non-C-TPAT partners must be afforded higher levels of scrutiny, and C-TPAT members are expected to verify the security measures being utilized.

CBP has also listed the following additional steps that C-TPAT members may want to take to mitigate threats to their supply chain corridors.

- ensure adequate oversight and accountability of the cargo loading and sealing process
- use cameras and/or other suitable monitoring devices or processes at cargo loading areas
- ensure that all conveyance hardware and fastening devices are inspected for overall security and deterrence of unauthorized access; where deficiencies are present, taking steps to mitigate the risk and/or harden all fastening/access devices
- consider the use of more stringent security devices to secure trailer doors
- audit and verification of employee screening processes, to include periodic reviews
- consider rotating personnel assigned to operationally sensitive positions, such as dispatcher
- review established processes for oversight of the transportation component and assess areas of potential weaknesses and vulnerability, with specific attention on addressing potential delays and/or opportunities for security breach
- work with service providers to develop written and verifiable procedures to track conveyances from point of origin to final destination
- establish route times from the manufacturing site to various points in the transportation flow, develop written and verifiable procedures to address those instances in which a driver does not check in within established time parameters, and prohibit drivers from making unauthorized stops

#### **Customs Reauthorization Bill Emphasizes Customs Facilitation, Trade Enforcement**

Senate Finance Committee Chairman Max Baucus, D-Mont., and Ranking Member Charles Grassley, R-Iowa, introduced Aug. 6 a customs reauthorization bill designed to strengthen U.S. Customs and Border Protection's customs facilitation and trade enforcement efforts. The two lawmakers emphasized that one of the measure's primary aims is to "reprioritize the trade functions" of CBP.

According to a joint press release, the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 include the following provisions.

**New Offices and Positions.** The bill creates (1) a new principal deputy CBP commissioner whose responsibilities include overseeing CBP's commercial operations and coordinating customs facilitation and trade enforcement training programs for agency personnel, (2) an Office of Trade within CBP that will assume the functions and personnel of the existing offices of International Trade, International Affairs and Trade Relations, (3) a Customs Facilitation and Trade Enforcement Division within CBP's Office of Field Operations, (4) a new trade advocate to act as a liaison between CBP and the private sector, including on customs facilitation and trade enforcement efforts, and (5) a director of trade policy within the Department of Homeland Security's Office of Policy and Planning who must coordinate with CBP to ensure that international trade interests are considered when DHS develops and implements policies.

**Enforcement Measures.** CBP will be explicitly allowed to use the mandatory advance information it collects for commercial enforcement purposes.

CBP and U.S. Immigration and Customs Enforcement will prepare, in consultation with the Commercial Operations Advisory Committee and the Trade Support Network, a biennial joint strategic plan outlining their plans to improve the enforcement of customs and trade laws as well as trade facilitation.

A new Commercial Targeting Division within CBP's Office of Trade will target imports that may violate U.S. customs and trade laws, with particular focus on laws and regulations related to intellectual property rights, health and safety, agriculture, textiles and apparel, general revenue and non-general revenue, such as antidumping and countervailing duties. The CTD is required to establish methodologies for evaluating the risk that imports may violate U.S. customs and trade laws and for issuing trade alerts when it determines that cargo may violate such laws. Trade alerts may direct further inspection or physical examination or testing of merchandise by port personnel.

CBP will be required to assign at least 40 commercial enforcement officers to supervise all trade

enforcement activities at the 40 busiest ports of entry.

**Trade Facilitation.** CBP must work with COAC, the Trade Support Network and Congress to develop and implement additional trade benefits for Tier 1, Tier 2 and Tier 3 participants in the Customs-Trade Partnership Against Terrorism. In addition, a new, voluntary Customs Facilitation Partnership Program would be created to provide trade facilitation benefits to entities that have a history of complying with U.S. customs and trade laws.

**Customs Modernization.** The bill directs the authorization of \$300 million a year for the Automated Commercial Environment and \$25 million a year for the International Trade Data System and requires CBP to develop a timeline for completing the implementation of these systems.

**Consultation, Cooperation and Oversight.** DHS must consult with Congress before proposing or finalizing any new trade-related policies or regulations. In addition, a new interagency Customs Review Board will ensure that proposed changes to CBP's rules or regulations are consistent with U.S. international trade obligations.

**Drawback.** The duty drawback process is streamlined by requiring that drawback claims be filed electronically and imposing objective eligibility requirements.

**Articles Repaired or Altered.** Goods exported under bailment agreements, or for warehousing, repackaging or both, and re-imported without having been advanced in value or improved in condition by any manufacturing process or other means abroad may be re-imported under HTSUS Chapter 98. Commercially identical goods exported and re-imported after having been advanced in value or improved in condition by any manufacturing process or other means abroad may also be re-imported under Chapter 98.

**Customs Brokers.** CBP may impose fines or revoke or suspend a customs broker license if a customs broker has been convicted of committing or conspiring to commit an act of terrorism.

**In-Bond Shipments.** The departments of Homeland Security and the Treasury must report to Congress annually on efforts taken to ensure the secure transportation of merchandise in bond through the U.S. This report must include information on the number of entries, entry location, average transportation time, total duties owed and number of carrier notifications of destination changes of in-bond merchandise. The report must also provide the average time taken to reconcile records created at the time the merchandise arrives with final clearance records as well as the number of records that remain unreconciled.

**Import Safety.** The bill establishes an interagency Import Safety Working Group that will assist DHS in developing a joint import safety rapid response plan that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers. The ISWG will also evaluate federal government and agency resources, plans and practices to ensure the safety of U.S. imports and identify best practices to assist U.S. importers in ensuring import health and safety.

**Intellectual Property Rights.** CBP must identify and maintain a confidential list of persons that have a history of attempting to import goods that infringe IPR, use that list when conducting IPR-related risk assessment targeting and periodically review the list and remove persons who have demonstrated a history of complying with IPR. CBP is also required to assign at least one full-time employee with principal responsibility for preventing the importation of IPR-infringing goods to each of the top ten ports, by volume, where CBP seized IPR infringing goods in the preceding two years. In addition, CBP must submit to Congress a report estimating the average time required to render a determination of IPR infringement with respect to imported goods.

The bill also streamlines the copyright recordation process, allows CBP to provide copyright or trademark owners with samples of detained or seized merchandise that may infringe a copyright or trademark, and gives CBP the explicit authority to seize unlawful circumvention devices.

**Forced Labor.** Existing prohibitions on the importation of goods made with forced, convict or indentured labor are expanded to include goods made by means of coercion or by persons subjected to a severe form of trafficking in persons. Specific penalties for violations of this law are provided in the amount of (a) three times the value of the violative goods for the first violation and (b) six times the value of the violative goods for the second and subsequent violations. In addition, any person determined to have engaged in a pattern or practice of violative actions may be banned from importing into or exporting from the U.S.

**Importer of Record.** CBP must establish an importer of record program and develop criteria and a process for assigning IOR numbers, ensuring that duplicate IOR numbers are not assigned and maintaining and evaluating the accuracy of a database of IOR numbers.

**24-Hour Ports of Entry.** The president is required to establish a two-year pilot program to designate one to three land border crossings on each of the northern and southern borders as commercial ports of entry

that may accept merchandise entries, collect duties and enforce U.S. customs and trade laws 24 hours a day.

**Honey.** CBP must direct appropriate personnel and resources to address concerns that honey is being imported in violation of U.S. customs and trade laws. It must also compile a database of the individual characteristics of foreign honey to facilitate the verification of country of origin markings. The Food and Drug Administration is encouraged to promptly establish a honey national identification standard to ensure that honey imports are classified appropriately for duty assessment and denied entry if they pose a threat to the health or safety of consumers.

**De Minimis and Informal Entry.** CBP may allow articles valued at less than \$500 to be imported by one person on one day duty-free. CBP may also prescribe regulations to permit the informal entry of merchandise when the aggregate value of the shipment is \$2,500 or less.

**Phase III of Lacey Act Declarations Takes Effect on October 1,, 2009** - Last year's "Food, Conservation and Energy Act of 2008", aka the "Farm Bill" amended the *Lacey Act* to require at time of entry a declaration that includes the following information regarding the plant component[s] of their imported merchandise:

(A) the **scientific name of any plant** (including the genus and species of the plant) contained in the importation;

(B) a **description of--**

(i) the **value of the importation**; and

(ii) the **quantity**, including the unit of measure, of the plant; and

(C) the **name of the country** from which the plant was taken.

APHIS is currently enforcing the declaration requirement for formal entries, and is not currently enforcing the declaration requirement for informal entries, personal importations, mail, transportation and exportation entries, in-transit movements, carnet importations (i.e., merchandise or equipment that will be re-exported within a year), and foreign trade zone and warehouse entries.

After reviewing public comments on its original proposals, in a February 3, 2009 *Federal Register* notice, APHIS announced its policy to implement the declaration requirements in stages, with electronic filing of the required form PPQ 505, initiated as of May 1, 2009 for products classifiable within Chapter 44 headings 4401, 4403, 4404, 4406, 4407, 4408, 4409, 4417 and 4418.

As of October 1, 2009, an additional set of products will be subject to the declaration, including a variety of consumer products of wood. Newly subject products will include wood pulp classified in Chapter 47 headings 4701 through 4705, as well as classes of wood and wood products classified within the remaining Chapter 44 headings, other than wood articles classified in heading 4421. Examples of products that will require declarations as of October 1, 2009, include wood charcoal, particle board, fiberboard of wood, plywood and veneered panels, densified wood, wooden frames (e.g. picture frames), packing cases, boxes, crates, drums, etc., casks, barrels, vats and tubs, tableware and kitchenware of wood, wood marquetry, statuettes, heading 4420 wood furniture, and caskets. Importers need to determine whether they have products, potentially including wooden parts of sets classified elsewhere, that will be listed on the Customs entry forms as classifiable within the Chapter 44 provisions (other than heading 4421). It remains the situation that declarations will not be required if the wood/plant products are used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

**Court Questions "Generra Presumption" of Dutiability of Payments to Seller** - In a case (*Peerless Clothing International Inc. v. U.S.*) argued by Sandler, Travis & Rosenberg, the Court of International Trade has called into question a mainstay position of U.S. Customs and Border Protection that under the transaction value methodology all payments from the buyer to the seller are presumed to be part of the dutiable value of imported goods. Making it easier to overcome this presumption can be of great importance to importers when addressing value issues with CBP.

The *Peerless* case involves related party sales between the seller, a Canadian men's suit manufacturer, and the buyer, its U.S. importer company. In a decision made in this case earlier this year, the CIT used the computed value methodology to determine the dutiable value of Peerless' imports and did not

address whether transaction value, which is the statutorily preferred method of appraising the value of imports, was or was not an appropriate methodology. The CBP asked the CIT to reconsider this approach, and while the court did agree that it should have first determined whether the goods could be appraised under transaction value, it rejected CBP's request for a rehearing after finding that the dutiable value of the goods would be the same under either methodology.

The CIT then went further and disagreed with Customs that under the so-called "*Generra* presumption" (named for a 1990 decision by the Court of Appeals for the Federal Circuit) the court must presume that all payments made by the buyer to the seller are part of the transaction value of the goods. First of all, the court said, there is no language to that effect in the *Generra* decision itself. Second, the court added, *Peerless* is distinguishable from *Generra* because CBP itself conceded, by examining *Peerless*' allocation of certain overhead expenses and agreeing with some and disagreeing with others, that transaction value does not necessarily or presumptively include all payments made by the buyer to the seller.

**Comments Sought on Possible Modifications to NAFTA Rules of Origin.** The International Trade Commission is soliciting public comments by Oct. 2 on the probable economic effects of the following proposed modifications to the NAFTA rules of origin.

- For cotton yarn and thread, manmade filament and staple yarn and thread, non-woven textile articles in HTSUS Chapter 56, and knit fabric, staple rayon fiber (HTSUS 5502, 5504 and 5507) other than lyocell would no longer be required to originate.
- For textile flock and dust and mill neps of HTSUS 5601.30, non-originating modacrylic synthetic filament tow of HTSUS 5501.30 would be allowed.
- For manmade staple fiber thread or yarn, cut warp pile fabric and long pile knit fabric *between the U.S. and Canada only*, acrylic or modacrylic synthetic staple fibers (not carded or combed) would no longer be required to originate.

If adopted, these changes would effectively extend duty-free and quota-free treatment to the specified articles regardless of the source of the specified fibers.

There will be no public hearing in connection with these investigations. The ITC expects to submit its advice to the Office of the U.S. Trade Representative by Nov. 30.

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