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President Nominates CBP Commissioner - President Obama announced Sept. 22 that he intends to nominate Alan D. Bersin as commissioner of U.S. Customs and Border Protection. Since April, Bersin has served as assistant secretary of homeland security for international affairs and special representative for border affairs, where he serves as Secretary Janet Napolitano's lead representative on border affairs and Mexico for developing DHS strategy regarding security, immigration, narcotics and trade matters affecting Mexico and for coordinating the secretary's security initiatives on U.S. borders. Prior to being named to this post, Bersin served as chairman of the San Diego County Regional Airport Authority. Earlier in his career he served as superintendent of public education in San Diego and then as California's secretary of education. He has also been a U.S. attorney for the Southern District of California, where he was appointed as the U.S. attorney general's Southwest border representative responsible for coordinating federal law enforcement on the border from South Texas to Southern California.

Bersin's nomination raises the question of where trade facilitation will fit in CBP's agenda. Bersin's relevant background has emphasized law enforcement and it is therefore unknown where he stands on trade issues, including the regulatory, infrastructure and other hurdles about which the trade community has become increasingly vocal. What is known, however, is that Congress is very interested in these issues, which are prominent in the customs reauthorization introduced in the Senate this summer. It is therefore likely that Bersin will be questioned closely during his confirmation hearing about his position on a wide range of trade-related issues.

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Pre-Screened Cargo Will Get Priority Treatment

During the recently concluded Texas State Customs Brokers conference an American Airlines representative indicated it is expected that non-screened cargo will be treated differently by airlines than CCSP prescreened cargo.

It was indicated that the treatment for screened cargo is anticipated to include priority receiving within the cargo operations, priority flight scheduling and loading for flight, and preferential pricing. It was further indicated that the cost of the looming 100 percent screening deadline is different than meeting the current 50 percent mandate. As such American Airlines anticipates an additional charge for freight received without prior screening. This is to cover the additional cost of screening that the airlines will have to complete, and the cost for separating the screened and non-screened freight.

TSA's Doug Brittan indicated that the agency is strongly encouraging shippers and exporters to explore and join CCSP. It is especially beneficial to those cargos that may be destroyed if opened for further inspection or that may require special handling such as pharmaceuticals and frozen items. TSA continues to perform outreach to freight forwarders and shipper groups to raise awareness of the program and its benefits.

More information on CCSP can be obtained at TSA's Website.

CBP Seeks Comments on Holders or Containers Entering Duty-Free

U.S. Customs and Border Protection is seeking public comments by Dec. 7 on the proposed extension without change of an information collection entitled "Holders or Containers which enter the United States Duty Free." This collection implements HTSUS 9801.00.10, which provides that articles manufactured in the U.S. and exported and returned without having been advanced in value or improved in condition may be brought back into the U.S. duty-free. It also allows CBP to implement HTSUS 9803.00.50, which provides for the duty-free entry of substantial holders or containers of foreign manufacture if duty had been paid upon a previous importation.

Pre-payment of Clean Trucks Fee to End Nov. 15 Change to eliminate extra processing costs **October 15, 2009**

Effective November 15, only importers and exporters using older, more polluting trucks to move cargo in and out of the Port will have to pre-pay fees under the Port of Long Beach's Clean Trucks Program. Currently, all cargo owners claim and pre-pay the fees, although those using clean trucks or rail are later reimbursed.

Last month, the Long Beach Board of Harbor Commissioners approved the change in response to industry requests. While the pre-payment process does not involve additional direct fees, cargo owners say the requirement has resulted in extra costs and onerous administrative burdens.

Shortly after the decision by the Port of Long Beach to change the pre-payment requirements, neighboring Port of Los Angeles followed suit with the elimination of pre-payment fees under its own program. The two ports share environmental goals, but manage their truck programs separately.

The Port of Long Beach's new rule, developed in cooperation with the PortCheck fee-collecting organization and Port of Long Beach Marine Terminal Operators, was to take effect on November 1, 2009. In order to better coordinate efforts with the Port of Los Angeles and avoid confusion among truckers, the vast majority of whom serve both ports, the new effective date has been postponed by two weeks to November 15.

Under the new rules, pre-payment will be required only from cargo owners who use older, more polluting trucks. Trucks that meet strict 2007 EPA emission guidelines or run on cleaner alternative fuels like Liquid Natural Gas (LNG) are exempt from the fee. For a chart showing which trucks must pay fees and which are exempt click [here](#). Cargo moved by train is also exempt from the Clean Truck Fee.

The new rules will have no impact on the pollution reduction goals of the Clean Trucks Program, which is far ahead of schedule. One year since the launch of the program, 85 percent of all containers moved through the Port of Long Beach are being carried by clean trucks or on-dock trains.

On January 1, 2010, all 1993 and older trucks will be banned, and 1994-2003 trucks will need to be retrofitted or replaced. Beginning January 2010, nearly all trucks moving goods at the Port of Long Beach will be clean trucks. The program aims to reduce air pollution from diesel trucks by 80 percent by 2012.

Fees collected from dirty trucks are used to help finance new, less polluting trucks.

Contact: Art Wong, Port of Long Beach Assistant Director of Communications/Public Information Officer, (562) 590-4123, (562) 619-5665 (cell), or wong@polb.com.

Parker & Company updates IT infrastructure – Parker & Company recently made the following IT updates to systems in all 3 border offices: Replaced all servers, our servers are used for employee work sharing, large file back-ups from individual work stations, maintains our customs entry presets, customer specific work instructions, and houses our ISO-9000 quality systems. We installed new fire walls. We placed in service a generator for back electrical power to our main frame used to process customer work requests for Customs filings and warehouse system. We are in process of obtaining cell web service for each office with remote filing port for ability to process customs filings over internet via our ABI service provider. We also continue to make improvements to our warehouse system. We recently added a feature that can be turned on or off for each customer to provide email of arrival of shipment specific information to our customers.

CSX and Union Pacific have started a new interline program for moving 53 foot equipment to and from CSX origin points to Laredo, Texas for pricing and info: [CSX Intermodal](#)

- Ramp-to-Ramp: www.csxi.com
- Door-to-Door: www.ShipCSX.com

Union Pacific

- Ramp-to-Ramp: www.up.com
- Door-to-Door: www.streamline.uprr.com

Surface Trade with Canada and Mexico Sees Stronger Gain, According to DOT Report - The Department of Transportation reports that U.S. surface transportation trade in goods with NAFTA partners Canada and Mexico rose for the third straight month in August, increasing 5.3%. The \$54.3 billion total represented a 24.9% drop from August 2008, the first time in eight months that the year-on-year decline has dropped below 27%. Surface transportation consists largely of freight movements by truck, rail and pipeline and accounts for about 88% of U.S. trade by value with Canada and Mexico.

Surface trade between the U.S. and Canada totaled \$32.9 billion in August, up \$1.9 billion from July but down 29.6% from August 2008. Exports by truck fell 17.0% by value from the previous year while imports by truck declined 26.1%. U.S.-Mexico surface transportation trade totaled \$21.3 billion, up \$0.8 billion from the previous month but down 16.2% from a year before. Exports by truck dropped 14.7% by value while imports by truck fell 13.5%.

According to the DOT, the value of U.S. surface transportation trade with Canada and Mexico in August was up 1.3% compared to August 2004 and 26.0 % from August 1999, including a 35.5% increase for exports and an 18.8% rise for imports.

New CBP Factsheet on 10+2 filings available for download from Customs Web site

http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/10_2faq.ctt/10_2faq.doc

APHIS/USDA user fee increase

	<u>Old Fee Amount</u>	<u>NEW Fee Amount</u>
Commercial Vehicle user fee	10.75	11.50 (APHIS Truck)

New Fee is effective 11/1/2009 for commercial vehicles entering US Customs import lots.

CBP Delays Requirement to Manifest and Enter Containers with Cargo Residue - U.S. Customs and Border Protection at the port of Champlain, N.Y., issued Sept. 10 a notice stating that CBP is delaying until further notice its enforcement of the requirement for containers with any amount of cargo residue to be manifested and entered. However, CBP is encouraging importers to take steps to comply with this requirement at their earliest opportunity.

In the July 17, 2009, *Customs Bulletin and Decisions*, CBP [modified 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 stated that effective Aug. 16 it would modify this ruling 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 added that it was 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 now states that it is delaying enforcement until further notice in order for the trade community to fully comply with these requirements. Once a definitive enforcement date is established, instruments of international traffic containing residual chemicals, cargo, goods, etc., must be manifested and entered in compliance with customs laws. If qualified, shipments containing residual goods can be entered as American Goods Returned. In addition, since the exact amount of the residual goods 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 transmission to CBP. The same estimated amount should be used at the time of entry of the goods. If a more precise amount is obtained after arrival, the entry should be amended.

Customs Exam Pass Rates Falls to the Single Digits - Twice a year, in October and April, CBP offers its Customs Licensed Broker Examination to the public. Given at various locations, the examination determines the individual's knowledge of Customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters, necessary to render valuable service to importers and exporters. No data was available on how many participants were taking the exam for the first time. Of the 1,200 candidates for the October 2009 exam fewer than 7 percent or approximately 80 managed to pass the 80-question test with a score of 75 percent or better.

CBP Seeks Comments on Delivery Ticket - U.S. Customs and Border Protection is inviting public comments by Dec. 4 on the proposed extension without change of form 6043, the Delivery Ticket. Warehouse proprietors, carriers, foreign-trade zone operators and others must prepare this form to cover the receipt of the merchandise and its transport from the custody of the arriving carrier. The information is used by CBP officers to document transfers of imported merchandise between parties.

POSCO Plant will encourage port activities in Altamira Mexico City,- After it started operating last June and being formally inaugurated in August, Pohang Iron and Steel Company (POSCO) plant, located in Altamira Industrial Park in Tamaulipas, will foster trade activities in this Port, because its production will be exported to the USA, Europe and South America. Per information provided by Altamira Integral Ports Administration, export activities by this steel company will directly participate in the increase in general cargo handled at the port, in addition to contributing to the arrival of more ships. For the time being, POSCO Plant will close 2009 with the production of 110 thousand tons of galvanized steel sheets and will reach maximum production in 2011, namely 400 thousand tons of steel per year. Source: El Financiero

Associations, Companies Tell Congress: Renew GSP Now NCBFAA added its support to a joint letter from nearly 50 trade associations and companies asking Congressional trade leaders to make immediate renewal of GSP a priority. Without Congressional action, the Generalized System of Preferences (GSP) program will expire December 31, 2009.

"We have entered a very sensitive period for the American companies and families that have come to depend on the duty savings granted through the preference programs," the letter stated. "During periods of economic hardship, uncertainty reigns supreme. By extending GSP in a timely manner, Congress has the opportunity to remove some of that uncertainty for companies and workers in the United States and developing countries that are struggling to compete in a global economy."

The letter explained that U.S. companies must make sourcing decisions and pricing decisions to cover the duty increase they will incur if GSP is not renewed. "Congressional action -- or inaction -- has an enormous impact on those decisions."

Senator Charles Grassley (R-IA), who is the ranking Republican on the Senate Finance Committee, has criticized Brazil and India's dominance of the GSP program, saying they are world-class producers who do not need the tariff preferences intended for lesser-developed nations. Senator Grassley wants the program to be substantively revised as part of any renewal to address these concerns. Proponents understand the need to revise the program, but warn Congress that "it is not realistic to expect that this effort could be completed before GSP expires on December."

CBP Proposes to Extend Foreign-Trade Zone Information Collections U.S. Customs and Border Protection is seeking comments by Nov. 14 on the proposed extension of forms 214, 214A, 214B and 214C, the Application for Foreign-Trade Zone Admission and/or Status Designation, and form 216, the Application for Foreign-Trade Zone Activity Permit. Forms 214 et al are used by companies that bring merchandise into an FTZ to register the admission of such merchandise and apply for the appropriate zone status. Form 216 is used by companies to request approval to manipulate, manufacture, exhibit or destroy merchandise in an FTZ.

Update on 10+2 Bond-Related Issues There is progress to report on ISF bonding requirements, but there are still some important items requiring further clarity by CBP. We are hopeful that CBP's next FAQ (said to be released very soon) will provide further guidance to the trade on setting bond amounts, the use of STBs, and when/where bonds for ISF will be filed.

During several meetings and calls with CBP, Roanoke Trade has presented information to CBP on how ISF impacts the use of customs bonds and carnets. CBP has already adopted some recommendations including: how the bond that obligates the ISF will be identified in the ISF data; and identifying goods moving under a carnet by a unique "Shipment Type Code" in order to make it easier for the trade while still allowing CBP to apply appropriate targeting rules.

The information below focuses on importer requirements and does not address carrier filing responsibilities for stow plans and container status messages.

What type of bond is required?

Once the flexible enforcement period expires on January 26, 2010, an ISF will have to be secured by a bond. The bond that will be obligated is that of the ISF Importer, or his filing agent if the agent elects to assume that liability. CBP expanded its regulations so that any of the following bond types will be available to meet the ISF bond requirement:

- CBP Form 301, Single Transaction or Continuous, Activity Code 1 (importer/broker bond)
- CBP Form 301, Continuous, Activity Code 2 (bonded carrier bond)
- CBP Form 301, Single Transaction or Continuous, Activity Code 3 (international carrier bond)
- CBP Form 301, Continuous, Activity Code 4 (foreign trade zone operator bond)

- Importer Security Filing Bond, (a new bond form found in Appendix D to Part 113 of the Customs Regulations)

What policies and procedures are still uncertain?

CBP still needs to clarify or establish policies and procedures for:

- The use and filing of STBs and the new Importer Security Filing Bond.
- Setting the bond amount, including any non-discretionary bond minimum.

During our discussions with CBP on these issues we have been informed that the process will be finalized in the near future. We will keep you apprised of the details when CBP has confirmed the process.

What about Liquidated Damages?

During the flexible enforcement period, CBP has announced they will not assess liquidated damages.

In the July 17, 2009, Customs Bulletin and Decision, CBP published [CBP Decision 09-26](#) (see pages 29-41) advising the trade on its guidelines for assessing and cancelling liquidated damages for the 10+2 obligations. A summary of the ISF portion is below, and we encourage everyone to review the full notice.

Violation	Consequences
Failure to file complete, accurate, and timely ISF.	CBP shall withhold release or transfer of cargo until ISF is received. CBP may limit the permit to unlade so that cargo is not unladen, and may seize cargo that has been unladen without permission.
Filing an inaccurate update 19 CFR 149.2(d).	Assess liquidated damages against the bond for \$5,000 for the first inaccurate update.
Failing to withdraw a filed ISF 19 CFR 149.2(e).	Assess liquidated damages against the bond for \$5,000.
Filing an untimely ISF.	Assess liquidated damages against the bond for \$5,000 per late ISF.
Filing an incomplete or inaccurate ISF.	Assess liquidated damages against the bond for \$5,000 per incomplete or inaccurate ISF.

Mitigation:

- When law enforcement goals are compromised, there is no relief.
- **First Offense:** pay between \$1,000 and \$2,000, based on mitigating or aggravating factors.
- **Subsequent Offense:** Pay not less than \$2,500, based on mitigating or aggravating factors.
- Certified Tier 2 or 3 C-TPAT participants can get up to an additional 50% reduction of the above amounts.
- See CBP Decision 09-26 for full details of mitigating and aggravating factors.

As always, Roanoke Trade is working closely with CBP and our valued clients in order to achieve the best solution for all interested parties. We will advise you of any information we learn as it becomes available.

Administration Not Expected to Act on Mexican Truck Tariffs This Year Business and farm groups whose members have taken a hit from the retaliatory tariffs Mexico imposed on U.S. exports earlier this year in a dispute over cross-border trucking are trying to keep pressure on the Obama administration to resolve the dispute. It appears, however, that the White House has no plans to do so in the near future, and the increased duties are thus likely to remain in place well into 2010.

On March 20, Mexico reimposed tariffs of 10% to 45% on \$2.4 billion worth of U.S. exports in retaliation for the termination of a U.S. pilot project that allowed up to 100 Mexico-domiciled motor carriers to operate beyond the border commercial zones and the same number of U.S. carriers to operate in Mexico. Affected products include Christmas trees; certain fruits, vegetables, juices and nuts; health and beauty items; tableware, kitchenware and glassware; manmade fiber yarn; carpets; jewelry; home appliances; sunglasses; and pens and pencils. Mexican officials have said they are prepared to lift the retaliatory tariffs if the pilot project is reinstated.

In the intervening months affected U.S. exporters have repeatedly urged the Obama administration to quickly resolve the dispute, asserting that the higher tariffs are harming their ability to compete in the important Mexican market. Most recently, agriculture officials of nine Western U.S. states sent a letter to President Obama Sept. 10 stating that the tariffs have been “extremely harmful” for farmers, who have not only seen declining shipments to Mexico, which accounts for one-seventh of all U.S. agricultural exports, but are also losing market share there to other competitors that may not easily return even once the tariffs are lifted. The letter was supported by the Alliance to Keep U.S. Jobs, a group of more than 150 U.S. manufacturers, companies and agricultural interests formed to address this particular issue.

At the same time, however, the issue appears to have fallen off the White House’s radar screen. Transportation Secretary Ray LaHood led an interagency effort to come up with a plan that allows the cross-border trucking program to resume but also addresses the concerns of the lawmakers who voted to end the previous program. Press reports indicate that this plan has been floated to key policymakers but that no further action has been taken, largely because the attention of both the administration and Congress has been focused on economic recovery and health care reform efforts. According to an *Inside US Trade* article, in a Sept. 15 meeting with the Alliance, Under Secretary of Transportation for Policy Roy Kienitz “signaled that any potential resolution was no longer in DOT’s control and now rested within President Obama’s inner circle within the White House” and said he would be “surprised” if the dispute were resolved this year. The article also cited an unnamed source as saying that because the administration needs the help of unions, who strongly oppose the trucking pilot program, on health care, the trucking dispute “just does not seem to be a top priority right now.”

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