



Parker & Company Worldwide

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CTPAT Services – Parker & Company continues to provide CTPAT consulting services: Parker will provide program guidelines and requirements, help you file with CBP and be on hand for site visit if necessary. Contact Abel Medina in our consulting department for service in this area amedina@parker-logistics.com Phone 956-831-2000

New Legislation Would Save Companies Money on Small Entries Rep. Bill Owens introduced May 26 the Customs De Minimis Adjustment Act of 2010 (H.R. 5375), which would increase from \$200 to \$1,000 the value of goods that can be brought into the U.S. duty-free and without customs entry procedures. Sandler, Travis & Rosenberg, P.A., is leading a coalition working to secure congressional approval of the House bill and a similar measure already introduced in the Senate. Parker & Company does not agree with this legislation. Currently brokers file electronic informal entries with relatively a small requirement of Customs employee manpower. This increase would shift the work to customs employees and perhaps cause delays in processing larger value commercial shipments.

Senate Approves Conflict Minerals Reporting Requirement In passing the Financial Reform bill on May 20, the Senate included an amendment by Senator Brownback relating to products containing conflict minerals. From NCBFAA's perspective, the Brownback amendment is far preferable to legislation pending in the House (HR 4128) that requires every entry to be certified. By contrast, the Brownback Amendment merely requires annual reporting by companies to the Securities and Exchange Commission (SEC). Nevertheless, there is concern that, with the Brownback language now part of the Senate bill, House members will seek to add HR 4128 to the final Financial Reform bill in the House-Senate conference committee. NCBFAA continues its efforts with a coalition of other trade associations to make sure this does not happen.

Top Reasons for ISF STB Rejections by the Revenue Division CBP has recently released statistics on its May 2010 ISF STB submissions, including the top reasons for rejection. During the month, there was an overall 15% rejection rate of ISF bonds, or about one in seven bonds were being rejected.

With the centralization of ISF bond processing, there is closer scrutiny of all continuous and single transaction ISF bonds filed with CBP's Revenue Division. This increased scrutiny has caused more bonds to be rejected due to what some would consider inconsequential mistakes on the bond or its related paperwork. In addition, forgotten rules that may not have been consistently enforced for years by local ports are surfacing as reasons for rejection. Below are the reasons and the frequency when CBP rejected an ISF STB in May, 2010.

Rejection Reason	Rejection Rate
Legal Designation	62%
Signature	13%
IR#	9%
Illegible	8%
Other	7%
Date	> 1%
Wrong Form	> 1%
Amount	> 1%

If your company already has an importer bond no need to use and ISF continuous or single entry bond.

Union Pacific Railroad HARLINGEN — City officials in a groundbreaking ceremony on Monday celebrated the start of an 18-month project to relocate the city's Union Pacific train switching station to a location outside Olmito. The \$17 million relocation project will alleviate traffic congestion at several city grade crossings, officials said.

As part of the project, a three-phase undertaking, a 1.6-mile track section running parallel to Commerce Street, about a block east of the street, will be rerouted. This will end train travel through seven grade crossings: Adams Avenue, North C Street, Washington Avenue, West Lela Street, West Ona Street, Orange Heights Drive and Markowsky Avenue. At the switching station along Commerce Street, eight existing tracks will continue to be used by Rio Valley Switching Company, which operates trains traveling

between Hidalgo County and Harlingen. But RVSC switching operations will be limited to the track space between Fair Park Avenue and Wilson Road, where no traffic will be blocked.

Eight sorting tracks and a new repair facility will be added to the Olmito rail yard, allowing Union Pacific to transfer all of its current Harlingen rail-switching operations there.

Donna International Bridge – The Donna International Bridge and Customs facility continues project according to project manager the Bridge is slated for opening September 1st, 2010. At first the bridge will be used for passenger traffic, with truck traffic slated for opening a few years later. The Donna Bridge will tie the community of Rio Bravo to Donna. Rio Bravo is a small manufacturing and Agricultural Community

Pistole Confirmed For TSA head - Senate, John Pistole's nomination as Administrator of the Transportation Security Administration (TSA) sailed through the Senate with unusual speed, as the Senate voted by voice vote on Friday to confirm Pistole. The new TSA head is a 27-year veteran with the Federal Bureau of Investigation (FBI). Pistole attracted bipartisan support, with many Senators viewing his FBI work on counterterrorism issues as an ideal qualification for the post.

From our Agent Skyline Germany - "Effective 29th April 2010 the new European Security Regulations will be implemented.

Please note that the cargo of all "unknown customers" will have to be x-rayed at the airport*** We will therefore be forced to charge the following for this activity: Unsecured cargo handling EUR 45,00 X-ray Fee EUR 0,15 per kg. We will need shippers name and location when asking for a quote so that we will be able to advise if this is a known or unknown Shipper.

*** And the kicker:

"Maximum dimensions to fit in an x-ray machine are 140cm (55") wide x 160cm (67") high, max weight is 800 kg per piece. If the UNSECURED cargo exceeds these measurements or weight, the cargo cannot be turned to SECURED cargo and will therefore not be accepted by the airlines at present. The Federal Aviation Office (LBA) in Germany, which has implemented the new rules, is currently searching for an alternative for cargo exceeding the max weight and dims. As long as there is no solution, this cargo will not be able to move by air" So any pieces larger will HAVE to be shipped by ocean freight?

DOT Removes Cargo Insurance Requirement for Most Motor Carriers, Freight Forwarders - The Department of Transportation's Federal Motor Carrier Safety Administration has issued a final rule that, effective March 21, 2011, will eliminate the requirement for most for-hire motor common carriers of property and freight forwarders to maintain cargo insurance in prescribed minimum amounts and file evidence of this insurance with FMCSA. Household goods motor carriers and household goods freight forwarders will continue to be subject to the cargo insurance requirement.

FMC to Review Interim Report on Vessel Capacity as Senators Push for Action - The Federal Maritime Commission will review during the closed session of a June 23 meeting an interim report in its fact finding investigation to the sufficiency of vessel capacity and cargo container availability in the U.S. export and import liner trades. The FMC's final report on this matter is expected by July 31.

The FMC is examining reports that U.S. exporters and importers are experiencing difficulties because of lingering service and equipment shortages following the recent economic downturn. There are concerns that these shortages could hinder the nascent economic recovery as well as progress toward the goal of doubling U.S. exports over the next five years, as envisioned by the president's National Export Initiative.

In a June 15 letter to FMC Chairman Richard Lidinsky Jr., Senate Agriculture Committee Chair Blanche Lincoln and Ranking Member Saxby Chambliss raised concerns about the effects of this situation, which is "prevalent from all major domestic ports to all major trade lanes," on U.S. agricultural exporters in particular. "The ability of our agricultural exporters to expand markets abroad is dependent on adequate ocean-going vessel capacity and container availability at inland locations," the senators wrote. However, U.S. exporters are having to wait as long as a month to secure space on ocean carriers, compared to earlier wait times of about a week. Obtaining the necessary containers is becoming increasingly difficult in some parts of the country as well.

The senators noted that these service interruptions, along with frequent rate hikes, are occurring despite the fact that most U.S. shippers enter into 12-month service contracts with ocean carriers. "These contracts are supposed to ensure that the carriers will provide the necessary weekly equipment and vessel space" and that shippers' rates will be fixed, the letter said. "Unfortunately, it has come to our attention that carriers are now routinely failing to honor these contracts." The two senators asked the FMC to provide information on what authorities it may have or should have to ensure that these contracts are honored, "including the ability to penalize carriers for egregious practices."

Only Paper Filers Affected by Recent Lacey Act Changes In an effort to create a uniform dataset, recent USDA changes to Lacey Act reporting require that plant material quantities be reported on the Plant and Plant Product Declaration (known as the PPQ505) using standardized metric units (kg, m, m2, m3). In response to industry concerns, APHIS is allowing a grace period until July 1 to give the industry more time to make the needed changes to declaration procedures. Those filing electronically are not affected by these revisions.

Nike Sues Two Customs Brokers For Counterfeiting In a suit brought in Savannah, Georgia, Nike alleges that a customs broker made entry for 4,624 pairs of counterfeit Nike shoes valued by U.S. Customs at \$183,157 by falsely identifying the goods as "ladies cotton woven pants". Nike further alleged that the broker identified MTC Marketing, Inc. of 11272 Leo Lane, Dallas TX 75229, as the importer of record and ultimate consignee of the counterfeit shoes, although MTC had never authorized that entry.

The complaint alleges that prior to filing the Entry documents, the broker's sole knowledge concerning the Entry was the information it received via a phone call from an individual who identified himself as "Michael Mai", the "Vice President" of MTC. In fact, Michael Mai had no relationship of any kind with MTC. The customs power of attorney signed by Michael Mai was fraudulent and lacked

both a notarization and/or corporate certificate attesting to the validity of the grant of the power of attorney. Moreover, the telephone contact number and email addresses provided by Michael Mai to D.L. Bynum were not connected to MTC.

Nike concluded that the Broker failed to use "reasonable care" in determining the nature of the goods covered by the Entry documents, and that the Broker's actions represented acts in furtherance of the distribution and ultimate sale of the Counterfeit Shoes. Damages and injunctive relief were sought under the Lanham Act. The customs broker has not responded to the allegations.

Supreme Court Upholds Key Aspect of Intermodal Transport (NCBFAA Briefing) - In a recent decision, the U.S. Supreme Court adopted the United States' position and solidified the legal support for through bills-of-lading, a key tool in the intermodal transportation system. The Court's decision reversed the Ninth Circuit Court of Appeals in the [companion cases](#) Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corporation, No. 08-1553, and Union Pacific Railroad Company v. Regal-Beloit Corporation, No. 08-1554.

As the Court noted, a through bill-of-lading allows cargo owners to "contract for transportation across oceans and to inland destinations in a single transaction." The question before the Court was whether the Carmack Amendment to the Interstate Commerce Act of 1887 applied to the inland leg of a through bill-of-lading issued by an ocean carrier, where no domestic bill-of-lading was issued and when the ocean carrier subcontracted for rail transportation. The Court adopted the position of the United States, noted the importance of intermodal movements in the nation's transportation system, and affirmed its earlier-stated view that through bills-of-lading are essentially maritime contracts. The Court based its decision in part on FMC oversight of the ocean carriers who issue through bills-of-lading. Staff attorneys from the Commission's Office of the General Counsel assisted the United States with the case.

Commission Chairman Richard A. Lidinsky, Jr., said: "During its nearly 50-year history, the FMC has taken a lead role in facilitating efficient intermodal transportation. So I'm pleased to see the Court recognize the importance of intermodalism for our nation's transportation system. I'd like to thank the FMC's Office of General Counsel and Solicitor General Elena Kagan's office for their excellent work on this crucial issue."

Federal Agencies Issue First-Ever Joint Strategic IPR Enforcement Plan (from STR Trade) The federal government released June 22 its first-ever Joint Strategic Plan for Intellectual Property Enforcement. Among the 33 enforcement strategy items laid out by this plan are the following.

- The government will establish a working group to study how to reduce its risk of procuring counterfeit parts. This working group will report its findings and issues requiring further analysis within 180 days of its first meeting.
 - Reflecting its support of improved transparency in IPR enforcement policy-making and international negotiations, the government will enhance public engagement through online outreach, stakeholder outreach, congressional consultations and soliciting feedback through advisory committees and official comment mechanisms.
 - The government will take action to provide Department of Homeland Security components with the authority to share information and samples of goods and circumvention devices with rights holders before the government seizes goods so that rights holders can assist in accurate determinations of infringement and violation.
 - The Office of the U.S. Trade Representative will initiate an interagency process to assess opportunities to further publicize and potentially expand on the notorious markets list in the annual Special 301 report in an effort to increase public awareness and guide related trade enforcement actions.
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- The government will seek changes to provide U.S. Customs and Border Protection with the authority to share with complainant rights holders' data on the enforcement of exclusion orders issued by the International Trade Commission in its Section 337 investigations, including denials of entry and seizures pursuant to seizure and forfeiture orders.
 - To strengthen Section 337 as an IPR enforcement mechanism, the ITC and CBP will explore procedures to facilitate and encourage communications with respect to the scope of exclusion orders. In addition, CBP will consider initiatives to enhance the efficiency and transparency of the exclusion order enforcement process, including such possible solutions as the development of a proceeding that will involve relevant private parties to the ITC investigation.
 - The government will have a database, or a combination of databases serving the same function as a single database, that is shared by federal law enforcement agencies, contains information about IPR cases and can provide case-specific information about pending investigations, including the name and contact information for the lead investigative agent.
 - The stationing of all overseas personnel trained to address IPR enforcement will be based on an assessment of the need to address IPR enforcement issues in particular countries or regions.
 - Capacity building and training efforts will be focused in those countries in which IPR enforcement is a high priority and where those efforts can be most effective.
 - An interagency committee on the counterfeiting of pharmaceutical drugs and medical products will be established to examine the myriad of problems associated with unlicensed Internet pharmacies, health and safety risks in the U.S. associated with the distribution of counterfeits, and the proliferation of the distribution of counterfeit pharmaceuticals in Africa.
 - Federal agencies will expeditiously assess current efforts to combat foreign-based and foreign-controlled Web sites and Web services used to infringe U.S. intellectual property rights and will develop a coordinated and comprehensive plan to address them.
 - Federal law enforcement agencies will encourage cooperation with their foreign counterparts to enhance efforts to pursue domestic investigations of foreign IPR infringers, encourage foreign law enforcement to pursue those targets themselves and increase the number of criminal enforcement actions against IPR infringers in foreign countries in general.
 - USTR will initiate an interagency process to increase the effectiveness of, and strengthen the implementation of, Special 301 action plans, which will focus on selected trading partners for which targeted efforts could produce desired results.
 - Manufacturers and importers will be required to notify the Food and Drug Administration in the event of a known counterfeit of any pharmaceutical or other medical product. Drug manufacturers will also be required to provide the FDA with a semiannual list and complete description of any legitimate drug products that are currently being distributed in the stream of U.S. commerce so that the FDA has updated information on all drugs and medical devices currently being sold by the manufacturers.
 - The Federal Food, Drug and Cosmetic Act should be modified to require that manufacturers, wholesalers and dispensers

implement a track-and-trace system that allows for the authentication of the product and the creation of an electronic pedigree for medical products using unique identifiers for products.

- The government will take action to allow importers and others involved in the importation of infringing goods to receive relief from civil enforcement action as appropriate when they voluntarily disclose the violation to CBP prior to the beginning of an investigation. If a valid disclosure is made, the infringing goods in the disclosing party's possession or control would be destroyed under CBP supervision and the disclosing party would bear the costs of destruction.
- The government will seek legislative amendments to specify authority for CBP to create and implement a mechanism to evaluate and issue administrative penalties for intellectual property-related export violations.
- In October 2009, CBP implemented a continuous bond option for trademark and copyright infringement cases, allowing rights holders to post a single bond that covers several transactions at different ports of entry. Provided it obtains the authority to provide rights holders with samples of circumvention devices, CBP will extend this new bond practice to cover samples of circumvention devices.
- Existing IPR laws, whether they impose criminal and/or civil liability, will be reviewed to ensure that they are effectively reaching the appropriate range of infringing conduct, including any problems or gaps in scope due to changes in technologies used by infringers. Federal agencies will also review existing civil and criminal penalties to ensure that they are providing an effective deterrent to infringement. Finally, federal agencies will review the enforcement of existing laws to determine if legislative changes are needed to enhance enforcement efforts.
- The Department of Commerce and other relevant agencies will conduct a comprehensive review of existing U.S. government efforts to educate, guide and provide resources to those U.S. businesses that are acquiring IPR in foreign markets, contemplating exporting intellectual property-based products or choosing markets for export, actively entering foreign markets or facing difficulties entering foreign markets, encountering difficulties enforcing their IPR in foreign markets. This effort will focus in particular, but not exclusively, on the Chinese market.

Vessel Space continues to be in tight supply – Parker & Company forwarding department advises vessel space continues to be high. Vessel operators are reluctant to give out advance bookings. Containers already delivered to ports are being bumped to the following sailings. We recommend Shippers to plan in advance of their required shipping ETD. We are also finding at the same time lines are raising rates. For bookings contact David Dubois ddubois@parker-logistics.com or 956-831-2000.

VETERANS Bridge Expansion Project - Brownsville. The U.S. Department of State has signed a permit for an expansion of the Veterans International Bridge at Los Tomates, Cameron County Judge Carlos Cascos said on Monday. The Presidential Permit to build the bridge was approved when the existing structure connecting Brownsville and Matamoros was being planned. Now an amendment to that permit has been approved to expand the structure. The expansion will add four lanes to the bridge, creating a separate section for commercial traffic. The bridge will allow a heavier flow of traffic to funnel directly from Expressway 77 into Mexico and vice versa. Construction is scheduled to begin in December and could take from 12 to 18 months. It will cost an estimated \$11 million from state and local funds.

New Intermodal Rail Trailer Yard – Donna Rio Valley switching in conjunction with Union Pacific has opened an Intermodal yard for receiving and releasing Intermodal trailers going to and from the Mid West and other points. The Service consists of Intermodal rail and over the road service from Rail Road ramps in the Mid West Union Pacific rail yards to San Antonio the trucking the trailers to or from the San Antonio Ramp to the Donna yard. The current volume is 60 trailers per week and growing Contact Steve Muschenheim at stevemus@parker-logistics.com or Phone 956-831-2000 for rates

The Bureau of Industry and Security (BIS) has submitted to the Federal Register (From Tuttle Law) for publication its long awaited changes to the Export Administration Regulations (EAR or Regulations), which modify License Exception ENC, and requirements for qualifying an encryption item as "mass market." The expected publication date is for Friday, June 25, 2010. Following is a summary of the overview of the new rule. The new encryption rule can be found at: http://www.tuttlelaw.com/customs_material2010-150721.pdf

Overview - With respect to encryption products of lesser national security concern, this rule replaces the requirement to wait 30 days for a technical review before exporting such products and the requirement to file semi-annual post-export sales and distribution reports with a provision that allows immediate authorization to export and re-export these products after electronic submission to BIS of an encryption registration.

The new regulations establish a "registration process." BIS has created a new SNAP-R screen for encryption registrations. The instructions for submitting an encryption registration are found in paragraph (r)(1) of Supplement No. 2 to part 748, and a PDF must be attached that provides answers to Supplement No. 5 to part 742.

New Note 4 To Category 5.II - A new Note was added to Category 5.II which provides:

Category 5, Part 2 does not apply to items incorporating or using "cryptography" and meeting all of the following:

a. The primary function or set of functions is not any of the following:

1. "Information security";

2. A computer, including operating systems, parts and components therefore;

3. Sending, receiving or storing information (except in support of entertainment, mass commercial broadcasts, digital rights management or medical records management); or

4. Networking (includes operation, administration, management and provisioning);

b. The cryptographic functionality is limited to supporting their primary function or set of functions.

Annual Self-Classification Report A condition of this new authorization for less sensitive products is submission of an **annual self-classification report** (see new supplement 8 to Part 742) on these commodities and software exported under License Exception ENC.

With respect to most mass market encryption products, this rule similarly replaces the requirement to wait 30 days for a technical review before exporting and re-exporting such products with a provision that allows immediate authorization to export and re-export these products after electronic submission to BIS of an encryption registration, subject to annual self-classification reporting for exported encryption products.

Only a few categories of License Exception ENC and mass market encryption products will continue to require submission of a 30-day classification request.

Encryption items that are more strictly controlled continue to be authorized for immediate export and re-export to most end-users located in close ally countries upon submission of an encryption registration and classification request to BIS. This rule also eases licensing requirements for the export and re-export of many types of technology necessary for the development and use of encryption products, except to countries subject to export or re-export license requirements for national security reasons or anti-terrorism reasons, or that are subject to embargo or sanctions.

"Ancillary Encryption" - Items that were self-classified or classified by BIS as "ancillary cryptography" items after October 3, 2008 are, upon the effective date of this rule, no longer classified under Category 5, Part 2. In addition, items that were self-classified or classified by BIS under ECCN 5A992 or 5D992 based on former paragraphs (b), (c) or (h) of the note to ECCN 5A002 are, upon the effective date of this rule, no longer classified under Category 5, Part 2. Exporters should reclassify such items under other categories of the CCL or designate as EAR99, as appropriate.

Examples of items that are excluded from Category 5, Part 2 by Note 4 include, but are not limited to, the following:

- piracy and theft prevention for software or music; games and gaming;
- household utilities and appliances;
- printing, reproduction, imaging and video recording or playback (not videoconferencing);
- business process modeling and automation (e.g., supply chain management, inventory, scheduling and delivery);
- industrial, manufacturing or mechanical systems (e.g., robotics, heavy equipment);
- facilities systems (such as fire alarm, HVAC); automotive, aviation, and other transportation systems;
- LCD TV, Blu-ray / DVD, video on demand (VoD), cinema, digital video recorders (DVRs) / personal video recorders (PVRs);
- on-line media guides, commercial content integrity and protection, HDMI and other component interfaces;
- medical/clinical - including diagnostic applications, patient scheduling, and medical data records confidentiality;
- academic instruction and testing/on-line training - tools and software;
- applied geosciences - mining/drilling, atmospheric sampling/weather monitoring, mapping/surveying, dams/hydrology; scientific visualization/simulation/co-simulation (excluding such tools for computing, networking, or cryptanalysis);
- data synthesis tools for social, economic, and political sciences (e.g., economic, population, global climate change, public opinion polling, forecasting and modeling);
- software and hardware design IP protection; and computer aided design (CAD) software and other drafting tools.

Changes In Application Process - This rule also removes the requirement to file separate encryption classification requests (formerly encryption review requests) with both BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD).

BIS is also amending the EAR by implementing the agreements made by the Wassenaar Arrangement at the plenary meeting in December 2009 that pertained to "information security" items. This rule adds an overarching note to exclude particular products that use cryptography from being controlled as "information security" items. The addition of this note focuses "information security" controls on the use of encryption for computing, communications, networking and information security. This rule also makes additional changes throughout the EAR to harmonize it with the new note.

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