



Parker & Company Worldwide

Trade News Quarterly October 2011

Parker & Company Web page has new look, Log on and browse the news letter archive www.parkerandcompany.com

Trade Agreements/GSP Clear Congress! - It was a good week for trade in Washington. Finally, the House and Senate swiftly passed the implementing legislation for the three Free Trade Agreements with Korea, Panama and Colombia, sending them on to the President for signing. The long anticipated approval will allow these trade initiatives to take effect. Perhaps, it will also break the trade impasse in Congress that has thwarted any serious effort to advance a trade agenda.

In addition to the FTA approvals, a final GSP renewal bill also cleared Congress on the same day, retroactively extending the trade preference program from January 1, 2011 until July 31, 2013.

President to Sign FTAs, TAA Extension Oct. 21 -The White House has announced that on Oct. 21 President Obama will sign legislation implementing the Korea, Panama and Colombia free trade agreements and reauthorizing the Trade Adjustment Assistance program.

New Highway in Mexico to link Mexican West Coast to McAllen and Brownsville - Baluarte Bridge, El Palmito, Sinaloa, Mexico 1,280 feet high / 390 meters high, 1,706 foot span / 520 meter span. This incredible bridge, and highway is nearing completion in Sinaloa, Mexico. It will connect Brownsville to Mexico's West coast port of Mazatlan, and the rich agricultural breadbasket that is the State of Sinaloa. Get ready for thousands of truckloads of tomatoes, other Winter vegetables, and other products which will come our way, instead of using their traditional crossing point of Nogales, Arizona. Also a new toll road was finished West of Tula, Tamps. Mexico to San Luis Potosi which will cut another 50 miles off the truck route to the Valley To view go to this link El Baluarte Bridge - A Mega-project – YouTube <http://www.youtube.com/watch?v=ld0LmUffUxU>

CBP Encourages Traders to Start Transition to ACE, Provides Update on Functionality - U.S. Customs and Border Protection announced Oct. 13 a partnership with the National Customs Brokers and Forwarders Association of America Inc. to encourage international traders to begin moving their import business processes to the Automated Commercial Environment. CBP has also provided an update on the deployment of ACE functionality.

A CBP press release states that in early 2012 the agency plans to announce via a *Federal Register* notice the decommissioning of the Automated Manifest System for rail and sea shipments, the first piece of the Automated Commercial System to be taken offline. CBP anticipates this move to ACE occurring in July 2012 or six months after the announcement.

In the meantime, the NCBFAA has asked its members to "begin their transition to ACE," said organization president Jeff Coppersmith. Assistant commissioner for the Office of International Trade Al Gina said CBP's new partnership with the NCBFAA will "certainly help expedite" these transitions, and Coppersmith added that "competitive advantages will begin to accumulate" for those who begin the process now.

CBP has announced programming for immediate delivery release process, but until this functionality is programmed the system is still not commercially useful to importers/brokers that need the immediate delivery filing for speed of release of truck and air shipments.

C-TPAT Members to be Notified of Others' Changes in Status

U.S. Customs and Border Protection announced recently a change to the Status Verification Interface for Customs-Trade Partnership Against Terrorism members in response to requests to allow the SVI to notify C-TPAT members when another member (that is being monitored) has had a change in status. While CBP cannot give exact details of such events, as of Aug. 14 it deployed a change to SVI that will include the following data elements to the SVI monitoring table.

- business type (which was not previously available on the main screen but was available if the hyperlink in "partner name" was clicked)
- added date (defaulted to Aug. 14, 2011, for existing SVI-monitoring partners)
- modified date (which will indicate when a modification happened to a monitored partner's account status)

In addition, the SVI will email C-TPAT partners a notification on their SVI monitoring page when the following changes occur: a company drops off the list (i.e., they generate a new SVI number, in which case there will be no details on the SVI page as the partner has initiated an event to be removed from the monitoring list), a company status changes to a non-certified state, or a

company status changes to a certified state. New additions will not trigger an email notification.

CBP states that this new feature should be considered not as a replacement for regular SVI monitoring but as an enhancement to current procedures.

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

MPF Increase and Budget Gimmickry - The mechanism to pay for renewal of GSP was an increase in the Merchandise Processing Fee (MPF) from the current .21% to .3464% effective October 1, 2011. **There is no change in the cap on the maximum fee which is \$485.** It is not yet clear how CBP will collect the increased fees from October 1 (effective date) until the date of enactment. More details will follow as they become available.

A notable and very confusing feature of the MPF increase is a provision that calls for a prepayment of fees (no later than September 25, 2012) for merchandise entered from October 1, 2012 until November 12, 2012. The amount of the prepayment will be equivalent to the amount owed by the importer for merchandise entered the previous year -- from October 1, 2011 until November 12, 2011. Then in December 2012, the Treasury will reconcile the prepaid amount with the fees for services actually provided. The reason for this convoluted provision was due to a budget point of order in the Senate because there was not enough money in FY 2012 to pay for the GSP/TAA. The remedy was to concoct this "prepayment" scheme to bring more fees into the 2012 fiscal year -- even though it will cost the government more to administer it. The House Trade Subcommittee recognizes how odious this provision is and will try to fix it in subsequent legislation.

DOT Says Remaining Steps Taken, Ready to Launch Mexican Truck Pilot Program - Transportation Secretary Ray LaHood sent to House and Senate leaders last week a letter asserting that the Federal Motor Carrier Safety Administration has fulfilled all the requirements necessary to launch a pilot program allowing long-haul Mexican trucks to operate beyond U.S. border zones. The first approval under that pilot will trigger the suspension of the remaining Mexican retaliatory tariffs on U.S. exports and could come as early as this month.

Under a 2007 law FMCSA must first test long-haul operations as part of a pilot program before it grants long-haul operating authority to Mexico-domiciled motor carriers. The same law requires that before a pilot program is initiated (1) DOT's Office of Inspector General must provide an initial report verifying FMCSA's compliance with requirements Congress established in 2001 and (2) DOT must take action as necessary to address any issues raised in the OIG report and submit a report to Congress detailing such actions.

FMC Moves Ahead on Cargo Diversion Study - The Federal Maritime Commission agreed Oct. 5 to move ahead on a study investigating the possible diversion of U.S.-bound cargo and regulations that would provide flexibility to ocean carriers and customers who use service contracts with rates linked to freight-rate indices.

Cargo Diversion. In response to written requests from lawmakers, the FMC voted to seek public comment and information to inform its study of the Harbor Maintenance Tax and other disparities that may be driving U.S.-bound cargo from U.S. ports. In an Aug. 29 letter to the FMC, Sens. Patty Murray and Maria Cantwell stated that a growing number of containerized U.S. imports from Asia move through the west coast Canadian container ports of Vancouver and Prince Rupert en route to the U.S. Midwest (e.g., Chicago and Memphis) through cross-border rail and that additional volumes enter U.S. markets via Mexican ports. These non-U.S. ports are able to claim a substantial per-container cost advantage over U.S. seaports based on the HMT alone, the senators said, resulting in increased cargo diversion and lost U.S. jobs. The loss of HMT revenues on the diverted shipments also means decreased funding for the Harbor Maintenance Trust Fund, and "as a consequence, our country's capacity to handle international trade growth is adversely affected."

Parker & Company offers Mexican West and East Coast container freight services – Parker and Company Monterrey office handles all our Mexican clients Container freight services we offer Competitive Ocean rates via Manzanillo, Lazaro Cardenas, and also East coast Port of Altamira. We provide trucking services from Monterrey KCS rail ramp and Altamira port. We also have Mexican broker clearance services. Our service is provided through our large international network of WNA agents providing hands on service. Please contact Ben Trelles in our Monterrey office btrelles@gmail.com

Bonds No Longer Allowed During AD/CV Provisional Measures - The International Trade Administration has issued a final rule that aims to strengthen the administration of antidumping and countervailing duty laws by making importers directly responsible for the payment of AD and CV duties. Effective for all AD/CV investigations initiated on the basis of petitions filed on or after Nov. 2, provisional measures during an investigation will normally take the form of a cash deposit, and importers will generally no longer be permitted to post bonds during the provisional measures period. The ITA notes that the circumstances under which it may allow the posting of bonds will be "rare and unusual" and will be evaluated on a case-by-case basis.

Clarification on Discontinuation of Most Paper Courtesy Notices of Liquidation - U.S. Customs and Border Protection has issued a clarification regarding the discontinuation of paper courtesy notices of liquidation as of Sept. 17.

According to CBP, the Sept. 17 paper courtesy notice includes liquidations through Sept. 30. As such, there will be no printed paper courtesy notices for entry summaries filed via the Automated Broker Interface with a liquidation date of Sept. 30 or later. For entry summaries filed electronically via ABI, CBP will send electronic courtesy notices via ABI to the entry summary filers. For entry summaries not filed through ABI, CBP will continue to mail paper courtesy notices of liquidation to the importers of record.

In addition, CBP deployed the new Courtesy Notice of Liquidation Report via the Automated Commercial Environment portal on Sept. 24. This report includes liquidation information for ACE entry summary types 01 (consumption) and 03 (antidumping/countervailing duty) as well as all Automated Commercial System entry types except 11 (informal) and 12 (informal quota). CBP stresses that this report is not the official notice of liquidation, has no legal effect and does not trigger the protest filing period. Also, CBP is asking users to refrain from running this report until it issues further notification that the data load is complete.

Popular Customs chief to lose post – U.S. Customs and Border Protection and industry officials are preparing for life after Alan Bersin with no signs that the U.S. Senate is prepared to confirm him as commissioner so he can remain in office. Unless the Senate Finance Committee formally recommends his appointment to the full Senate for its consent, Bersin's dynamic tenure as head of the nation's primary border security and trade enforcement agency will be over in three months.

President Obama installed Bersin during a congressional vacation in March 2010 to avoid the confirmation process when the Finance Committee wouldn't act on his nomination. Finance Committee Chairman Max Baucus, D-Mont., and other members were upset by revelations that Bersin had not filled out immigration and citizenship paperwork for household workers and believed the White House was not forthcoming with information about the transgression. To remain in effect a recess appointment must be approved by the Senate by the end of the next session of Congress, or the position becomes vacant again. That typically means a recess appointment must be approved by about the end of the next calendar year.

Editor's note: The following is a long read and intended for our Customer's Customs Compliance personnel this could be a substantial change if approved.

CBP Considering More Flexibility for Post-Importation Adjustments - U.S. Customs and Border Protection is inviting public comments no later than Oct. 24 on a possible policy change on the applicability of transaction value in the context of post-importation adjustments. This change would make it easier to make transfer pricing adjustments after importation and could result in some duty savings as well.

Merchandise imported into the U.S. is appraised under 19 USC 1401a and the primary method of appraisal is transaction value, or the price actually paid or payable for the merchandise when sold for exportation to the U.S. plus certain additions. The term "price actually paid or payable" means the total payment (whether direct or indirect) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. Transaction value is normally fixed at the time of importation but may be arrived at by using a formula. Rebates, or any other decreases in the price actually paid or payable made or effected after the date of importation, are to be disregarded for the purposes of determining transaction value.

However, CBP notes, importations that involve transactions between related parties may involve adjustments to initial transfer prices after importation in accordance with the company's formal transfer pricing policy or formula. In some cases that policy may provide for year-end compensating adjustments to comply with the requirements of an advance pricing agreement between the U.S. party and the Internal Revenue Service. Such adjustments could affect whether the price is considered fixed or determinable by objective formula at the time of importation.

CBP's current policy on the treatment of post-importation adjustments is set forth in ruling HQ 547654, dated Nov. 9, 2001, in which the price for the goods was arrived at pursuant to a methodology that included an initial sum subject to adjustments. CBP determined that transaction value did not apply because the price was not considered to be fixed or determinable pursuant to an objective formula prior to importation because at least one of the elements for determining the price was within the control of the buyer and/or the seller. Nonetheless, following the hierarchy of the valuation statute, CBP found that the goods could be appraised using the "fallback" method of valuation based on the related party price and that the adjustments could be reported (and claimed) to CBP through reconciliation.

CBP is now proposing to change this policy so that that even if the parties are related and certain costs may be within their control, if the transfer pricing policy is set before importation and used by the parties it may be considered an objective formula, thus allowing the use of transaction value for post-importation adjustments. However, the following additional criteria would have to be met: (1) there is a written intercompany transfer pricing determination policy that sets out how the transfer price is to be determined prior to the importation, (2) the importer/buyer is the U.S. taxpayer and uses its transfer pricing methodology in filing its corporate income tax returns and determining the transfer price for the products covered by the transfer pricing policy, (3) the company's transfer pricing policy specifically covers the products for which the value is to be adjusted, (4) the policy specifies what adjustments must be made to the transfer price and how those adjustments are to be determined, (5) the adjustments, although to a certain extent within the control of the parties, do not result in value manipulation, (6) if adjustments are made the company provides detailed explanations and calculations of the adjustments incurred in the U.S. and claimed after the importation, (7) the relevant transfer pricing policy pursuant to which adjustments are claimed is in effect prior to the importation, and (8) there is an absence of other circumstances that may indicate that the compensating adjustments do not result in an arm's length price between the parties. CBP notes that no single one of these factors would be determinative and that its finding with respect to whether an objective formula exists would be made on a case-by-case basis.

In addition, companies would still have to be prepared to show that transaction value is acceptable under the circumstances of the sale test or the test values test.

CBP is also considering that downward adjustments in the transfer price made pursuant to the transfer pricing study are not rebates or other decreases in the price actually paid or payable that are made or otherwise effected between the buyer and seller after the date of importation of the merchandise. Instead, post-importation adjustments would represent an element of the determination of the price actually paid or payable, in which case post-importation adjustments made pursuant to the transfer pricing policy would simply reflect what should have been reported as the invoice price upon entry had the exact price information been available at the

time.

Finally, CBP is considering a requirement under which importers would have to use the reconciliation program to properly apply transaction value and account for the total price paid or payable for imported merchandise where a formal transfer pricing study or policy or an APA provides for upward or downward post-importation adjustments that directly or indirectly relate to the value of the merchandise.

Parker & Company Trucking- Parker & Company has trucks in Houston every day; we can pick up your freight at the airport cargo terminal or from many of the import warehouses in the Greater Houston area. Contact our Freight department for rates either Xavier Cardenas xcardenas@parker-logistics.com or David Dubois ddubois@parker-logistics.com

FDA Announces End of the Discretionary Enforcement Period of the Interim Final Rule on Information Required in Prior Notice of Imported Food

August 30, 2011

The U.S. Food and Drug Administration (FDA) today announced that the discretionary enforcement period of the Interim Final Rule on, "Information Required in Prior Notice of Imported Food," ends on September 6, 2011. The Interim Final Rule which was published on May 4, 2011, and became effective on July 3, 2011, is a requirement of the [FDA Food Safety Modernization Act](#) (FSMA).

FDA issued the Interim Final Rule to require a person submitting prior notice of imported food, including food for animals, to report an additional element of information; the name of any country to which the article has been refused entry.

Enforcement of this Interim Final Rule will begin on September 6, 2011, and can help FDA make better informed decisions in managing the potential risks of food imported into the United States.

For additional information, please go to the links below:

[Prior Notice of Imported Foods](#)

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/PriorNoticeofImportedFoods/default.htm>

[What You Need to Know about Prior Notice of Imported Food Shipments](#)

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodDefenseandEmergencyResponse/ucm267673.htm>

[Interim Final Rule: Information Required in Prior Notice of Imported Food](#)

<http://www.regulations.gov/#!documentDetail:D=FDA-2011-N-0179-0001>

New ACE Capabilities for Importer Security Filing - U.S. Customs and Border Protection has announced that as of July 13 new capabilities were deployed via the Automated Commercial Environment with respect to the importer security filing. Importers now have access through ACE to the ISF progress reports that previously were only available via email subscription. These reports are also now available via ACE to ISF filers and sureties. In addition, importers who file 12 or fewer ISF transactions per year will now be able to file and track their ISF transactions directly via the ACE portal without the need to file via the electronic data interchange. Other ISF capabilities planned for delivery in ACE later this year include (a) capability to query the status of an ISF transaction by transaction number and bill of lading number and (b) capability for Customs-Trade Partnership Against Terrorism Tier 3 importers to query individual ISF transactions

Foot notes - Articles in this newsletter are taken from variety of sources. Including Journal of Commerce, Sandler and Travis newsletter, and NCBFAA Monday morning briefing. Other articles are personally written by the newsletter publisher Frank Parker.

The publisher has taken all reasonable steps to verify the accuracy of the content of this site. However, Parker & Company shall not be responsible for errors or omissions. Any advice in this newsletter is general and we recommend you contact Parker & Company licensed brokers or your customs council with specifics on your import or export transactions.