"SHAP" TALK

April 2012 Issue No. 120

In this issue:

TRADE NEWS

FDA Announces ITACS

On March 14, 2012, the Food and Drug Administration (FDA) announced the launch of their Import Trade Auxiliary Communication System (ITACS) portal for the purpose of improving communication between the FDA and the trade community.

The FDA hopes to accomplish three main objectives through the system:

- Capability to check entry/entry line statuses
- Capability to file requested entry documentation electronically on designated entries/lines
- Capability to submit goods availability location information for targeted shipments electronically

Benefits to the trade community will include:

- Receipt of more detailed entry status messages than the messages shown in ABI
- Elimination of the requirement to submit paper documents and shipment availability information which will eliminate the issue of lost documentation
- Reduction in phone call inquiries to FDA concerning entry statuses
- The use of ITACS when the CBP/FDA interface is down
- Allows FDA to have more resources and time to focus on completing examinations and expediting reviews of entry documents

Anyone with an entry number can access the ITACS portal. Via the entry number the user can query entry statuses, submit electronic documentation, and shipment availability information with the caveat that availability information for FDA examination shouldn't be submitted until the shipment has been unloaded and is physically available for FDA to examine.

The information provided will include product descriptions, product codes, countries of origin, quantities, and statuses of individual lines. FDA has stated that no confidential information will be displayed in the system including any display of firms or firms information such as facility registration numbers involved in the transaction. Once all entry lines show the May Proceed status message the entry is considered closed by FDA and will immediately be dropped from display in the ITACS system.

Current issues with the system include server capacity, file size limitations, and requiring submitted documents to be in PDF format.

Future enhancements to the system will include:

- An account based system which will allow FDA to send Notices of Action electronically among other functionality

- Queries for FDA firm identifiers and product codes
- Display of laboratory and examination time frames
- Submission of other document types not currently allowed in the system
- A printer friendly version of the status message page
- Document virus scanning
- Links to FDA reference materials

There are no future plans to integrate ITACS with ACE.

FDA has posted a walk through guide of the system's functionality. It can be viewed by visiting: http://www.fda.gov/ForIndustry/ImportProgram/ucm296314.htm.

ITACS can be accessed by visiting the following link: https://itacs.fda.gov

Argentina to Lose GSP Benefits

Argentina is set to lose its GSP benefits on our around May 25, 2012. According to the U.S. Trade Representative Ron Kirk, ""The suspension of Argentina's GSP eligibility is based on a finding that the country is not in compliance with the statutory GSP eligibility criteria set by Congress. Specifically, the Argentine government has failed to pay two longstanding arbitral awards in favor of U.S. companies. We urge the Government of Argentina to pay the subject awards. This would allow us to consider reinstating Argentina's GSP eligibility and promote the growth of a mutually beneficial U.S.-Argentina trade and investment relationship."

2011 GSP imports from Argentina totaled $477 million (about 11 percent of total imports from Argentina), making Argentina the ninth-ranking source of imports under the GSP program last year.

U.S.-Korea Free Trade Agreement Implementation

The U.S.-Korea Free Trade Agreement (known as KORUS or UKFTA) took effect on March 15, 2012. U.S. Customs and Border Protection (CBP) completed its programming and was able to accept entries in its system for the FTA on March 21, 2012.

CBP has posted instructions for the Korea FTA on its website at http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/korea/

The instructions include how to make a claim for the FTA, handling textiles and apparel, certification under the agreement, and how Customs plans to verify origin.

An interim rule to amend the Customs regulations was published in the Federal Register on March 19, 2012:

http://www.gpo.gov/fdsys/pkg/FR-2012-03-19/pdf/2012-6554.pdf

Comments on the interim rule may be submitted by May 18th.

New Export Control Agency: E2C2

Executive Order 13558 creates the Export Enforcement Coordination Center which will go by the name E2C2. The E2C2 strengthens the enforcement of U.S. export laws through the facilitation of partner agency communication and collaboration to keep our nation safe. Immigration and Customs Enforcement (ICE) will manage the office under the U.S. Department of Homeland Security.

The E2C2 serves as the primary forum within the federal government for executive departments and agencies to coordinate and enhance their export control enforcement efforts. The Center maximizes information sharing, consistent with national security and applicable laws. This helps partner agencies detect, prevent, disrupt, investigate and prosecute violations of U.S. export control laws.

Export enforcement requires a unified U.S. government response. The following departments will participate in the center, and any other agencies or offices from time to time as the President may designate.

- The Department of Commerce,
- The Department of Defense,
- The Department of Energy,
- The Department of Homeland Security,
- The Department of Justice,
- The Department of State,
- The Department of the Treasury, and
- The Office of the Director of National Intelligence

You can contact the E2C2 to report suspicious activity by completing a tip form at: http://www.ice.gov/exec/forms/hsi-tips/tips.asp or by calling the E2C2 at: (866) 347-2423 (U.S., Mexico and Canada) or (802) 872-6199 (other countries across the globe).

The E2C2 website is located at: http://www.ice.gov/export-enforcement-coordination-center/. Executive Order 13558 dated November 9, 2010 establishing the Export Coordination Center can be found at http://www.gpo.gov/fdsys/pkg/FR-2010-11-15/pdf/2010-28854.pdf.

New BIS Website

The Bureau of Industry and Security, under the Department of Commerce, has a new website under development. When you go to www.bis.doc.gov you will see two pictures – one of the current website and one of the beta test version. BIS is giving the public a chance to test the beta version or preview version and has an easy submit feedback button at the top for users to make suggestions or to comment on the beta version. BIS previously solicited comments from the public for the new website, but this gives everyone a chance to see where BIS items of interest are being placed, and to see how user friendly the website may be for your purposes.

We encourage all exporters and anyone in the industry that may use the BIS website to test out the beta version and let BIS know what you think while there is still time to modify items in the new site.

CBP Reports Costs and Savings Associated with C-TPAT Program

U.S. Customs & Border Protection (CBP) has posted on its website a report which outlines the cost/savings associated with participation in the Customs-Trade Partnership Against Terrorism (C-TPAT) program entitled "2011 C-TPAT Costs & Savings Survey".

Inquiries and findings of the survey include:

- 75% of respondents reported a cost for implementation of a C-TPAT focused program as related to membership. Costs ranged from $280 to $4 million. The median was approximately $17,000.
- 62% of respondents also reported costs for maintenance of the program in a range from $45 to $815,000. The median was approximately $9,000.
- A small percentage of importers and carriers reported costs associated with border delays. Where the mode of transportation was land the median costs were $200 for delays, $1,000 for rail delays, $500 for air freight delays, $1,500 for ocean delays.
- In response to the question what percentage of supply chain contracts require the partners to be C-TPAT certified 8% reported all, 9% reported none, 40% reported between 1% to 45%, and about 30% advised 50% to 99%.
- 26% of respondents reported a number of person-hours related to time savings with their membership in the program ranging from 25 to 48,000 person-hours yearly with a median of 373.
- 24% reported a cost savings associated with the program from $50 to $52 million. The median was $5,350.
- Respondents were asked to rate cost/savings related to the program as neutral, net positive, or net negative. The group's responses were distributed evenly.

There are costs associated with being a C-TPAT member, which are offset by savings in some cases. Some respondents also reported profitability impact by not benefiting from expected improvements in the program such as faster border crossings and fewer inspections.

In summary CBP determined that the value of the program cannot be measured accurately in terms of cost or savings. They advise that the program is a crucial part of supply chain security and that membership allows for enhanced security methodologies, feedback, and improvement recommendations. CBP advises that most members view the program as a best practice for security approaches, which provides improvements in security practices and less exposure to legal and financial risks.

The report in its entirety can be viewed by visiting the CBP website at http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_news_reports/2011_cost_savings.ctt/2011_cost_savings.pdf

COMPLIANCE CORNER

Auditing Your Customs Entries

Under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using Reasonable Care to enter, classify and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether other applicable legal requirements, if any, have been met. An importer of record's failure to exercise Reasonable Care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

U.S. Customs and Border Protection has issued a Reasonable Care Checklist to help importers understand their legal responsibility. The second question in the checklist deals with entry audits.

"Has a responsible and knowledgeable individual within your organization reviewed the Customs documentation prepared by you or your expert to ensure that it is full, complete and accurate? If that documentation was prepared outside your own organization, do you have a reliable system in place to insure that you receive copies of the information as submitted to U.S. Customs and Border Protection; that it is reviewed for accuracy; and that U.S. Customs and Border Protection is timely apprised of any needed corrections."

Are you auditing the entries prepared by your Customs broker? Depending on your file volume, you don't need to audit every single entry, but as a responsible importer, you need to be auditing.

Here are the points that should be covered when auditing entries prepared by your broker:

CF7501 Entry Summary

- Master bill of lading number(s) match documentation.
- Piece count match documentation.
- Classification match internal assigned classification for the item.
- Reportable quantity amount match documentation.
- Valuation match documentation.

- Country of origin match documentation.
- Country of export match documentation.
- The correct party relationship reported.

Commercial Documentation

- Piece count match receiving records.
- Piece count match Purchase Order.
- Value match Purchase Order.
- Value match payment records.

If errors are found, the broker must be contacted in order to file corrections with Customs.

The primary objective of a Customs Focused Assessment is to review an importer's internal controls. Monitoring is one of the five internal controls that Customs expects to see in place with a compliant importer. Auditing is a major component to ensure that procedures are being followed and any deficiencies are detected and corrected.

The Reasonable Care Checklist may be found here:
http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp021.ctt/icp021.pdf

Please review the checklist. If you find that your import program does not meet all the requirements, please contact us at compliance@shapiro.com to see how we can help you.

Should I Use Ex-Works?

Ex Works is the only "E" Incoterm which is a departure term. Ex Works represents the absolute minimal seller responsibility. The named place for Ex Works is the place from which the shipment begins, which will typically be the seller's premises.

The seller is required to have the goods packaged and available at the named place. Delivery takes place and the seller's risk ends when the goods are given to the carrier picking up the goods at the named place.

The buyer is responsible for everything else, including loading. The seller is <u>not</u> responsible to load the collecting vehicle. How many drivers do you know who load trucks? How many buyers from overseas are going to send a crew to load the truck? So typically the seller ends up loading the cargo. What if the goods are damaged while the seller is loading the truck? It's at the buyer's risk. If you are purchasing under Ex Works terms, be very specific in your sales contract about who will be responsible for loading the truck. If you want the seller to load the truck, consider using FCA terms.

Ex Works is also the only Incoterm where the seller is not responsible for export clearance. If the buyer cannot arrange for their own export formalities, then FCA terms should be used.

Under Ex Works, the buyer is not obliged to provide any information regarding the export of the goods to the seller. This can be problematic if the seller requires such information for tax or other purposes. Again, you might be better off using FCA.

Exporters beware if you are selling Ex Works! The folks at the U.S. Census Bureau are not so keen on Ex Works terms. These are also known as routed exports. Ex Works is the only term where the buyer has the obligation for export clearance. However, the U.S. exporter is still responsible for export compliance and for providing the buyer's forwarder with the required data elements for the AES filing – such as a description of the goods, schedule B number, ECCN, and any information regarding licensing. Even though the forwarder has been appointed by your buyer, you are going to have to work with them so that they can compliantly file the electronic export information (EEI). As the USPPI, you must determine if the goods are licensable. You can't just leave the freight on your loading dock for pick up and be done with it. How do you know if the AES was filed? The forwarder is under no obligation to give you a copy of the AES record. The freight forwarder has been appointed by the foreign purchaser. How do you know the mode of transport? How do you even know if the goods were indeed exported? It's possible a buyer could conceal the purchase as an export to get a lower price and avoid paying sales tax.

When you use Ex Works as an exporter, how do you know where your goods are ending up? Are they going to Cuba? Are they going to a competitor? Diversion is a tremendous supply chain compliance risk. Be very cautious if you are selling Ex Works and you have a controlled product. In fact, don't use Ex Works if you export a controlled product since you still bear the compliance risk as the USPPI. You are better off with C terms so you can control the freight and the forwarder.

Census has come out with a Notice of Proposed Rulemaking that says the forwarder (authorized agent) must provide the USPPI with the ITN and date of export in a routed transaction. That should close the loophole to provide proof to the USPPI that the AES was indeed filed and the goods exported. The final rule is expected shortly. Even so, we generally recommend that U.S. exporters steer clear of using Ex Works terms. We understand the commercial reality that U.S. exporters will sometimes have to use Ex Works terms in order to make the sale. If Ex Works is your only option, then be sure to work diligently with your customer's freight forwarder to ensure the transaction is filed in accordance with your instructions, to the extent possible.

U.S. importers should also be wary of Ex Works terms as some countries charge export duties. Since the buyer is responsible for the export formalities, U.S. importers could find themselves paying export duties to the government of the seller's country.

One of the few advantages to Ex Works terms for U.S. importers is the dutiability of foreign inland freight, or the pre-carriage. Foreign inland freight will be non-dutiable on shipments with Ex Works terms. For shipments with other than Ex Works terms, foreign inland freight will be part of the dutiable value to the extent it is included in the price of the goods.

Certified C-TPAT importers need to map the cargo flow for their international transactions and identify who is handling their goods at each point in the transaction. If the buyer manages the shipment from the buyer's dock (Ex Works seller's premises), they have more control over the cargo and can identify any potential supply gaps or anomalies. So that's about the only good thing about Ex Works. Otherwise, we recommend you steer clear of Ex Works as both an importer and an exporter.

[This article is the first in a series on selected Incoterms as suggested by a Shap Talk reader. We welcome your suggestions for topics!]

TRANSPORTATION UPDATE

April 2012 Update

INDUSTRY NEWS:

Samuel Shapiro & Company, Inc. attends Transpacific Maritime Conference 2012
Every year the Journal of Commerce hosts the Transpacific Maritime Conference (TPM) in Long Beach, CA. The annual gathering is the largest maritime event in our industry. The TPM brings together carriers, importers, exporters, forwarders, brokers, truckers, longshoremen and the like to discuss current events and to forecast conditions for the upcoming year on a myriad of topics. Samuel Shapiro & Company, Inc. sends representatives to this event every year to network and attend the lectures about hot industry issues that focus on the Transpacific Trade. Here are some of the topics that were discussed:

<u>Carriers are on a quest to restore sustainable rate levels to remain profitable</u>
Captain Wei of COSCO was the first of many speakers invited to the event. Mr. Wei discussed how the TSA Carriers want to keep capacity at "reasonable levels" so that "reasonable rates can be restored" to keep the carriers in a sustainable cash position to remain in business. This means the carriers are ready to idle capacity in order to keep up with the demand on space. Idled capacity went from 95K TEU in the second quarter of 2011 to 334K TEU in the third quarter to 595K in the fourth quarter in the Transpacific Trade. Mr. Wei spoke of increased fixed costs such as fuel that justify the carriers' need to impose higher rates. He is hoping that competition between carriers will be more rational so that they can focus on remaining profitable in order to offer superior customer service levels. Captain Wei hopes that customers realize that they need to pay for better value added services so the carriers can afford to improve and become more efficient.

Transpacific Freight Rates and Market Outlook

Mario Moreno, Economist with the Journal of Commerce, explained how the Export trade with Asia has grown faster than the Import trade in the past year. Imports from Asia grew by only 1% in 2011 and ended at 92% of the levels that we saw during the peak levels in 2007. Exports to Asia grew 7.3% in 2011 and the growth is expected to continue in 2012 as China's middle class and the accompanying demands continue to grow. Rising import prices for goods produced in China caused imports from China to drop by 1.1% last year. Mr. Moreno predicts the economy to expand 2.3% in the next year fueled by a healthier housing industry and an even healthier auto industry in the United States. Auto parts will be a large sector in importing into the United States from Asia. Mr. Moreno noted that the U.S. economy is still growing below potential and rising oil prices could stem growth in 2012.

Martin Dixon of Drewry predicts that the supply and demand forces with the carriers in the Transpacific Trade will be even more volatile in 2012 than in 2011. Mr. Dixon predicts a tighter supply of space in 2012 but the supply outlook is confused and uncertain. Carriers plan to move 6.6% of their capacity out of the Transpacific Trade in favor of service to Latin America and Intra-Asia.

At this time 6% of the available fleet in the trade is idled. In February, carriers in the Transpacific reported they were at 77% capacity, and by the beginning of March this increased to 93% capacity. Experts at Morgan Stanley also predict higher "recovery rates" due to the fact that rates fell steadily for 16 months leading up to January 2012 to unsustainable levels. It was pointed out that Bunker Fuel prices are at a record high.

Due to the pressure on fixed costs the carriers in the Transpacific Trade have announced the following rate increases:

On March 15, a General Rate Increase (GRI) was imposed on the trade as follows:
$240 per 20'; $300 per 40'; $335 per 40'HC; $380 per 45'

On April 15, a GRI was proposed and announced as follows:
$320 per 20'; $400 per 40'; $450 per 40'HC, and $506 per 45'
Note: already one carrier (Zim) is calling the April 15 increase a "Peak Season Surcharge"

On May 1, a GRI was proposed and announced as follows:
$400 per 20'; $500 per 40'; $565 per 40'HC; $635 per 45' to West Coast ports
$560 per 20'; $700 per 40'; $790 per 40'HC; $890 per 45' to East Coast ports

In addition, there will be efforts made for the carriers to recover fuel costs by raising bunker surcharges in the coming months. The carriers reported that bunker costs are 33 to 35% higher than last year.

Samuel Shapiro & Company, Inc.will work with the carriers to mitigate any GRI wherever and whenever possible on behalf of our import clients.

Megaships to be brought into the Transpacific Market

The steamship industry is in a quandary now that they are trying to introduce "Megaships" of 10K + TEUS into the market. These megaships will not be able to go through the Panama Canal until around 2015 so the megaships would only affect USWC services. Nonetheless, the carriers will need to see a 13.5% growth in the next three years to absorb the planned capacity. Since the smaller vessels will be deployed into other trades lanes such as Latin America, those markets must see an 11% increase in business to absorb capacity. In 2012, the industry will phase in as many as 55 megaships into the market. There will be a movement of multiple carriers sharing vessel space and the only thing that will differentiate the carriers will be customer service.

There are some worries that congestion and demurrage result from the larger vessels. There are also concerns that the larger vessels will produce more carbon dioxide causing increased pollution at the ports.

On the U.S. East Coast (USEC), only Norfolk and Baltimore are expected to be ready to berth the megaships by 2015 with the required 50 foot depth. New York will not be ready as the Bayonne Bridge needs to be raised and this is not expected to be done until 2016. Charleston is expected to get their depth to 46 to 48 feet by 2014. Savannah will not be ready until 2016. There is some possibility that the megaships will use the Suez service to the USEC until the Panama Canal is ready.

Growing markets to compete with China's rising costs

Vietnam, a nation of 90 million people, is expected to be a rising star in the transpacific trade. Imports into the USA from Vietnam increased by 24% in 2010 as furniture, rice, garments, and coffee imports rose. Vietnam differs greatly from China in that it is a net importer of goods. Inflation in Vietnam is high and the currency is devalued but the average salaries are the second lowest in Asia making it very attractive to manufacturers. Vietnam is seen as pro-business and enjoys a very low crime rates. One concern in Vietnam is the infrastructure is not keeping up with their growth.

India also has several things going for it: low labor costs, a highly educated English-speaking work force, a growing affluent middle class, and increasing personal consumption. India's challenges include high inflation, devalued currency, port congestion, severely challenged infrastructure, shortage of warehouse space, and complex GST tax structure making trade difficult. India is in the middle of a $60 billion investment in highway improvements and its largest port at Nhava Sheva is dredging to 45 feet to accommodate larger vessels.

Mexico's low wages and 4% unemployment coupled with the proximity to the United States have continued to make it an attractive manufacturing alternative to China. Mexico has been developing its ports of Manzanillo and Lazaro Cardenas to increase trade to make it attractive to Asian markets as well.

OCEAN FREIGHT:

World's Largest Container Ship Enters the Port of Long Beach

The MSC Fabiola, currently the largest container vessel now serving the U.S.-Asia trade, was welcomed into the port of Long Beach last month. The MSC Fabiola was built in 2010 and measures 1,200 feet long by 157 feet wide, and is capable of carrying more than 12,000 container units. It is believed that larger ships are more cost effective and reduce impact on the environment by decreasing diesel consumption. Considered "big ship ready," the main channel at the Long Beach port is 76 feet deep, the deepest in North America.

Last February, the MSC Roma, not as large as the MSC Fabiola, but still capable of carrying 9,200 20-foot equivalent units called on East Coast port of Savannah, as part of MSC's weekly Golden Gate Service between Asia and the U.S. East Coast.

Maersk Line Idles 5 Percent of Fleet

Maersk Line CEO Soren Skou announced the idling of about 5 percent of its global capacity, about 800,000 20-foot equivalent units. Advising that this figure could soon increase to more than 1 million TEU's, a level not seen since 2009; Skou, who became CEO three months ago, said that "as an industry, we have been investing ahead of demand, and [we], have to invest less…stop trying to outgrow each other, building bigger and bigger ships." Maersk Line forecasts container demand to slow between 5 and 8 percent in the next few years compared to an average of 10 to 11 percent over the past 25 years, attributing this to weakening Western economies, slowed down manufacturing activity in Asia, and smaller product sizes. Yet Skou says the company does not have any acquisition plans and does not expect much more consolidation in the industry in the near future.

AIRFREIGHT:

China Air import update: Due to heavy backlogs from carrier capacity cuts and a flood of new products from major electronics companies, space shortages gave Asia outbound air carriers a platform to raise spot rates in March.

Fuel surcharges will be increasing by $0.05 to $0.10 per kilogram on many inbound and outbound air carriers.

As part of summer schedule changes, Lufthansa will increase frequency on Detroit – Frankfurt service. The "Motor City" will have 2 flights a week beginning March 25th.

Air France/KLM/Martinair group will increase freighter capacity in Chicago and bring back freighters for JFK and ATL also on March 25th.

Virgin Atlantic will open London to Mumbai service again on an A330 aircraft starting October 2012

ALERTS:

Port Strike in India
Please note that a strike affecting activity in the port of Jawaharlal Nehru in Nhava Sheva, India, started March 27. Political leaders have called for an indefinite strike against Jawaharlal Nehru Port Trust (JNPT) starting March 27th at 9 am, local time. This is in response to the inordinate delay to allot plots of land to Project Affected Persons (PAPs). The issue, which has been pending for 27 years, involves allotting 12.5% of the land to PAPS who lost their land when India created the port. Since JNPT acquired the land from the farmers for its project in 1984, it was decided that the PAPs would get all the benefits under the 12.5% scheme; however, this has never come to fruition.

According to the latest information we have received, local villages gave an ultimatum to JNPT to resolve this dispute by March 26th. The Peasants and Workers Party (PWP) have vowed that over 50,000 of their workers will come together to shut down JNPT. Politicians have cut across party lines and have called for a shutdown of JNPT as well to put an end to this 27-year delay. A resolution was not reached; therefore, the strike is now in effect.

The strike will affect all Nhava Sheva operational activities, including terminal, CFS, and rail operations, which may slow down, or stop functioning all together, for a number of days.

Samuel Shapiro and Company, Inc. will keep you posted on further updates. Please contact your Shapiro representative if you have further questions or concerns.

SAMUEL SHAPIRO & COMPANY, INC. NEWS

Employee of the Month

As previously featured in “Shap” Talk, Samuel Shapiro & Company, Inc. has been sharing with you the names of employees who have been recognized for their exceptional efforts and contributions to our Company. At Shapiro, we continually work to develop, challenge, and inspire all of our employees to grow individually and with the Company. This month, we would like to recognize Kari Kishiyama, Staff Accountant, for her outstanding performance and contributions.

We encourage you to provide us with employee feedback! Please email us at hr@shapiro.com.

WE WANT TO HEAR FROM YOU!

Do you have suggestions for an article? Is there a topic you’d like us to cover in a future issue? Please let us know! Send your feedback to shaptalk@shapiro.com.