

## **“SHAP” TALK**

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## **TRADE NEWS**

### **Continuing Political Furor over Dubai Ownership of Six U.S. Ports**

A bipartisan group of lawmakers is demanding that the Treasury Department re-open a national security review of a business deal that would give a Dubai (United Arab Emirates) company control over operations at six major U.S. ports. The deal causing concern is the purchase by Dubai Ports World of London-based Peninsular and Oriental Steam Navigation Co., which controls through a U.S. subsidiary, the ports of New York, New Jersey, Baltimore, New Orleans, Miami and Philadelphia.

Congress men and women called upon the Treasury Secretary to initiate an investigation by the Committee on Foreign Investment in the United States (CFIUS), the secretive interagency committee that reviews potential national security threats over foreign acquisitions of U.S. assets. The CFIUS previously approved the deal without an extensive review. Senate Banking Committee Chairman Richard Shelby plans to hold a hearing on the Dubai ports transaction in early March.

Administration officials of the Bush administration decided last month that a deal to hand over operations at major American ports to a government-owned company in Dubai did not involve national security and as a result did not require a more lengthy review.

The unanimously approved decision was made by an interagency committee led by Deputy Treasury Secretary Robert M. Kimmitt. The group included officials from 12 departments and agencies, including the Departments of Defense, Justice, State and Homeland Security, as well as the National Security Council and the National Economic Council. An objection from any member of the interagency committee would have commenced, as required by law, an additional 45-day review. Such a review is now being suggested by governors and members of Congress.

Mr. Bush and his top aides are strongly resisting the demand for further review. Before the transfer became known, the administration's review of foreign business deals had come under criticism for not being sufficiently sensitive to national security. In September, the Government Accountability Office, an investigative arm of Congress, said the Treasury Department had used an overly narrow definition of national security threats in an effort to encourage foreign investment.

The review began in mid-October. The chief operating officer of Dubai Ports World, Edward H. Bilkey, said he and other executives met in December with Mr. Kimmitt's committee and then had numerous additional meetings before the final decision.

The president's spokesman said Mr. Bush recently became aware of the deal for some of the facilities in several major ports, including New York, Baltimore and Miami. As the press coverage of the deal began to appear, the president went back to every cabinet member whose department was involved in this process and asked if they were

comfortable with this deal going forward. Each expressed that they were comfortable with the transaction going forward.

Republicans are seeking to delay the transfer in an effort to buy time needed for additional review. Mr. Bush threatened to veto any bills introduced to block the deal to run the ports. Lawmakers and aides said the nearly united Republican resistance in Congress was a new atmosphere for a White House accustomed to strong public support for its policies and the willingness to settle any disagreements privately. It was not seen, however, as a permanent break.

Before the administration approved the transfer from a British company, P&O Ports, Dubai Ports World had to agree to cooperate with future United States investigations, said an administration official who spoke only if granted anonymity because of the confidentiality of the agreement.

**Source:** New York Times article “Big Problem, Dubai Deal or Not”, dated 02/23/2006.

### **United States and Oman Free Trade Agreement**

On January 19, 2006, the Office of the United States Trade Representative (USTR) announced Rob Portman and the Omani Minister of Commerce and Industry, Maqbool bin Ali Sultan, have signed the U.S.-Oman Free Trade Agreement (FTA).

Oman is the fifth Middle Eastern country to have negotiated a FTA with the United States, further advancing the Bush administration’s vision for a Middle East Free Trade Area (MEFTA) by 2013. The MEFTA initiative is a plan of graduated steps for Middle Eastern nations to increase trade and investment with the United States as well as others in the world economy. The United States has been seeking comprehensive free trade agreements with the Middle Eastern nations that are most firmly on the path to domestic reforms and the rule of law, as well as nations intent on protecting property rights, including intellectual property. The expansion of the MEFTA initiative is the foundation for economic growth and prosperity, as well as political and social challenges facing the Middle East.

Congressional approval is the next step for the US-Oman FTA. It could then be signed into law by the President, who would subsequently issue a proclamation thus implementing the trade agreement.

USTR Contacts: Christin Baker / Neena Moorjani (202)-395-3230

**Source:** Office of the United States Trade Representative, Press Release dated January 19, 2006 available at [http://ustr.gov/assets/Document\\_Library/Press\\_Releases/2006/January/asset\\_upload\\_file25\\_8774.pdf](http://ustr.gov/assets/Document_Library/Press_Releases/2006/January/asset_upload_file25_8774.pdf)

## **Textile Troubles**

Textiles and wearing apparel account for 43% of the duties collected by Customs and Border Protection (CBP). Textiles also account for Customs' largest loss in duties, primarily due to non-compliance with various free trade agreement regulations. It is no surprise that textile shipments come under more scrutiny than other commodities. In the last 4 months alone, Customs has seized over \$10 million in textile and apparel articles that were misdescribed in an effort to circumvent trade laws and regulations. Some companies are trying to avoid the Chinese safeguard quotas. There have been recent reports about a scheme to avoid the Chinese quotas by describing cotton merchandise as ramie. The Customs Office of Regulatory Audit has recommended nearly \$5 million in recoveries from conducting textile and wearing apparel reviews during fiscal year 2005.

In November and December 2005, CBP said over 2,000 additional examinations were conducted to identify smuggling and misdescription of merchandise. They announced the hiring of 45 additional personnel to bolster U.S. textile law enforcement efforts. During the month of February 2006, it seized \$4 million in illegal textiles attempting to navigate into the country.

A variety of personnel, including import specialists, international trade specialists, laboratory analysts, data analysts, auditors, and attorneys have joined ongoing efforts to enforce the laws and regulations governing the importation of textiles. The majority of the positions are located in the field at the ports of entry.

CBP will use all available means, such as trade pattern analysis, on-site verifications, review of production records, audits, and laboratory analysis, in an effort to continue to vigorously enforce U.S. trade laws and ensure that appropriate revenue is collected.

CBP also reported that during the month of February 2006, it made a series of 25 seizures including illegal transshipments as well as misdescribed merchandise in an effort to avoid quotas. Investigations on these seizure cases are ongoing. In addition to its continuing enforcement efforts, CBP is initiating special operations to detect and deter fraudulent activity.

CBP personnel are also visiting high risk foreign factories. Some they have found to be closed, some factories refused the CBP team admission, and some had evidence they were engaging in illegal transshipments. As a result of these visits, CBP is in the process of seizing shipments valued at \$1.3 million from any factory that was determined closed.

**Sources:** CBP press releases available at:

[http://www.cbp.gov/xp/cgov/newsroom/press\\_releases/02162006.xml](http://www.cbp.gov/xp/cgov/newsroom/press_releases/02162006.xml)

[http://www.cbp.gov/xp/cgov/newsroom/press\\_releases/02022006.xml](http://www.cbp.gov/xp/cgov/newsroom/press_releases/02022006.xml)

## GSP Update

The Generalized System of Preferences (GSP) program will be expiring on December 31, 2006 for non-African Growth and Opportunity Act (AGOA) countries. This year's renewal is predicted to be not without controversy. The U.S. Trade Representative recently requested comment on the GSP program. Some respondents want Brazil's removal from the program due to its poor track record on intellectual property rights. The apparel community wants textile and apparel products added to the list of articles eligible for GSP status.

The U.S. Trade Representative has also published a notice of tariff number and country combinations that are expected to lose GSP status effective July 1, 2006, as well as a list of those that may be eligible for reinstatement.

Combinations expected to lose GSP status are (descriptions are not the complete tariff descriptions):

2402.10.80	Dominican Republic	Cigars, cheroots and cigarillos
2905.11.20	Trinidad	Methanol (methyl alcohol)
4412.19.40	Brazil	Plywood of wood sheets
6802.91.25	Turkey	Travertine monumental or building stone
6802.93.00	Brazil and India	Granite monumental or building stone
7113.19.50	Dominican Republic	Precious metal (other than silver) jewelry
7403.11.00	Peru	Refined copper cathodes
7408.11.60	Russia	Refined copper wire
7615.19.30	Thailand	Aluminum cooking and kitchen ware
8408.20.20	Brazil	Compression ignition internal combustion piston engines
8409.99.91	Brazil	Parts of engines
8544.30.00	Honduras	Insulated ignition wiring sets

The full lists of numbers expected to lose GSP status or be reinstated may be found at: [http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/GSP/Interim\\_2005\\_Import\\_Statistics\\_Relating\\_to\\_Competitive\\_Need\\_Limitations.html](http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Interim_2005_Import_Statistics_Relating_to_Competitive_Need_Limitations.html)

The United States is reinstating trade benefits lost to the Ukraine in August 2001. The U.S Trade Representative (USTR) announced that effective January 23, 2006, duty free benefits under the GSP program have been reinstated, and designation under "Special 301" has been lowered from "priority foreign country" to "priority watch list." The GSP program promotes economic growth in the developing world by providing preferential duty-free entry to approximately 3,000 products from nearly 140 designated beneficiary countries and territories. Ukraine's GSP benefits were suspended on August 24, 2001 because Ukraine failed to provide adequate and effective protection of intellectual property rights, and was the largest producer and exporter of pirated optical media products (CDs and DVDs) in Europe. According to the USTR, the

reinstatement is in recognition of Ukraine's efforts to strengthen its licensing regime and enforcement efforts to stem the illegal production and trade of CDs and DVDs.

### **Air Freight Security Programs**

In the United States, air freight security is under the guidelines of the Transportation Security Administration (TSA), which is a part of the Department of Homeland Security. The TSA is charged with protecting U.S. transportation systems to ensure freedom of movement for people and commerce. The Transportation Security Administration (TSA) was created in response to the terrorist attacks of September 11, 2001, as part of the Aviation and Transportation Security Act.

<http://www.tsa.gov/public/>.

With the creation of TSA, security programs and many security initiatives have been placed on air carriers, forwarders and handlers to ensure the safety of the general public.

Recently, the German Federal Aviation Authority (Luftfahrt-Bundesamt-LBA) has issued new requirements regarding the Security Declaration of the known consignor as imposed by LBA to treat shipments as "known cargo" and consignments from unknown shippers without a security declaration.

<http://www.lba.de/englisch/lba/org/b/b6/aviation/RegA/knownconsignorForm.doc>

These regulations stem from the December 16, 2002 Regulation (EC) No 2320/2002 of the European Parliament and the Council which came into force to establish and implement appropriate Community measures, in order to prevent acts of unlawful interference against civil aviation.

The impact on the importer into the U.S. is that there may be delays in loading a consignment from an unknown shipper and probable additional charges. Many countries have adopted similar measures for the security of freight and passengers. Please be aware of these obligations and understand that each country is doing its very best to protect its citizens, and the citizens of the country of ultimate destination.

For more information regarding the recent measures undertaken by the German Government regarding air security, please go to the Luftfahrt-Bundesamt-LBA website at: <http://www.lba.de/englisch/lba/org/b/b6/aviation/aviation.htm#text1>

### **Customs Seizes Carpets from Egypt**

Over the last two months in the Port of Savannah, Customs and Border Protection (CBP) has seized a significant number of carpets from Egypt bearing false markings of "Crafted with pride in USA" or no country of origin markings at all. CBP officers and import specialists discovered the carpets in five overseas container shipments that held a total of 25,349 carpets valued at \$360,544. The importer falsely marked or

failed to mark the carpets with the country of origin in an effort to mislead potential consumers into thinking that the carpets were made in the US.

CBP requires every article of foreign origin entering the U.S. to be legibly marked with the English name of the country of origin unless an exception from marking is provided for under the law. This effort informs the ultimate purchaser in the U.S. of the country in which the imported article was made. CBP issued five marking notices against the importer prior to following through with the seizure.

### **Containerized Cargo Sealing Policy**

On January 27, 2006, the Bureau of Customs and Border Protection (CBP) posted to its website information on its containerized cargo sealing policy that came into effect on August 8, 2005. This policy is applicable to containerized cargo that arrives, departs, or transits the United States via sea or land and is opened by a CBP officer pursuant to a CBP inspection. CBP's procedure applies to U.S. bound containers that are opened at a Container Security Initiative (CSI) port pursuant to a CBP inspection if permitted by the host nation and does not apply to empty containers, or to examinations that are conducted under the auspices of other agencies.

The goal of this procedure is to establish uniformity in the sealing of containerized cargo at the conclusion of a CBP inspection; preserve the integrity of containerized cargo leaving CBP possession; eliminate any confusion within the trade community that might result in the refusal of delivery and unnecessary delay in legitimate cargo entering the United States commerce; and standardize the type of seal CBP officers are authorized to affix.

Since August 8, 2005, CBP officers, including Agriculture Specialists and Border Patrol Agents, began affixing an International Organization for Standardization/Publicly Available Specification 17712 (ISO/PAS 17712) compliant high-security bolt seal immediately upon the conclusion of a CBP inspection. The seal will be marked with the letters "CBP" and have a unique alphanumeric serial number. The C-TPAT program requires the use of these high security ISO PAS 17712 bolt seals.

Prior to resealing an examined container, the removed seal(s) will be placed inside the examined container or trailer at the conclusion of the inspection. In the event a carrier chooses to fasten an additional seal, the CBP-installed, high-security bolt seal must not be removed, replaced, or manipulated in any way.

CBP officers will notify the appropriate parties of the container number that has been examined and the serial number of the newly installed high-security bolt seal before the arrival of the container at the receiving facility. Such parties might include the carrier, broker, or importer. Depending on the circumstances, notification can be made by facsimile, telephone, annotating the shipping/bill of lading or other transportation document or via another mutually agreed upon method.

Questions regarding this policy may be directed to CBP officers at your local port of entry. A complete directory of the various ports of entry can be found on the CBP Web page at: <http://www.cbp.gov/xp/cgov/toolbox/ports/>

**Source:** "Containerized Cargo Sealing Policy" at [http://www.cbp.gov/xp/cgov/newsroom/fact\\_sheets/container\\_sealing.xml](http://www.cbp.gov/xp/cgov/newsroom/fact_sheets/container_sealing.xml) appearing on CBP's website on January 27, 2006.

### **The European Union Delays Wood Packing Debarking Requirements**

Effective March 1, 2005, the European Union requires all newly assembled, repaired or recycled unprocessed raw wood packaging materials (hardwood and softwood) entering the EU to be either heat treated or fumigated and officially marked under [ISPM15](#). In addition all wood packaging material is required to be debarked and marked DB. However, due to continuing issues surrounding the EU debarking requirement U.S. wood packaging materials will not contain the DB symbol. Please refer to the United States Department of Agriculture website for further information at: <http://www.aphis.usda.gov/ppq/wpm/export/eu.html>

The European Union's (EU) Standing Committee on Plant Health (SCPH) recently voted to delay implementation of the EU's new wood packaging debarking requirements at import into the EU until January 1, 2009. The EU prepared a position paper, including the request for the review of ISPM 15 at international level and an extensive technical and scientific justification for the inclusion of a requirement addressing the EU concern about the presence of bark attached to WPM.

Pending the results of that revision at the international level, this Directive includes the postponement of the EU's debarking requirement until the end of 2008. This would leave sufficient time for the adoption of a revised ISPM 15 at IPPC level (<https://www.ippc.int/IPPC/En/default.jsp>) and for the implementation of it at the EU level.

A revision clause of this postponement by September 1, 2007 will allow the EU to evaluate the progress of the ISPM 15-revision at that moment and consider appropriate action if the work of the standard setting bodies is substantially delayed or disrupted.

The summary report of the meeting of the Standing Committee on Plant Health held in January 2006 can be viewed at: [http://europa.eu.int/comm/food/fs/rc/scph/rap89\\_en.pdf](http://europa.eu.int/comm/food/fs/rc/scph/rap89_en.pdf)

### **New FDA Labeling Requirement for Packaged Food Containing Major Allergens**

The Food and Drug Administration (FDA) has announced that food labels for domestically manufactured and imported package food must clearly state if the products contain any ingredients, including flavoring, coloring, or incidental additive



that are or contain protein derived from the eight major allergenic foods. This requirement is effective for food products that are labeled on or after January 1, 2006.

The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) states, *manufacturers are required to identify in plain English the presence of ingredients that contain protein derived from milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, or soybeans in the list of ingredients or to say "contains" followed by name of the source of the food allergen after or adjacent to the list of ingredients.*

This labeling will be especially helpful to children who must learn to recognize the presence of substances they must avoid. For example, if a product contains the milk-derived protein, casein, the product's label must use the term "milk" in addition to the term "casein" so that those with milk allergies can clearly understand the presence of the allergen they need to avoid.

FALCPA does not require food manufacturers or retailers to re-label or remove from grocery shelves products that do not reflect the additional allergen labeling as long as the products were labeled before the effective date. As a result, FDA cautions consumers that there will be a transition period of an undetermined length during which it is likely that consumers will see packaged food without the revised allergen labeling.

For more information about FALCPA, visit FDA's food allergy page at <http://www.cfsan.fda.gov/~dms/wh-argy.html> and the Food Allergen Labeling and Consumer Protection Act of 2004 at <http://www.cfsan.fda.gov/~dms/algact.html>.

**Source:** FDA Press Release: FDA to Require Food Manufacturers to List Food Allergens available at <http://www.fda.gov/bbs/topics/NEWS/2005/NEW01281.html>

## **COMPLIANCE CORNER**

### **Customs Audits**

Did you know that size no longer matters for a Customs audit? Under the Focused Assessment program, Customs has changed the way they select companies for audit by using risk management tactics to identify high risk areas. So instead of looking at the size of the importer, they are looking at high risk areas such as NAFTA, 9802 programs, antidumping, particular countries of origin, value, classification, or GSP.

In January, Customs introduced a new program called Quick Response Audits. This would be a single issue audit with a narrow focus, such as intellectual property rights or transshipments. CBP anticipates an increase in Quick Response audits in future audit plans as it refines the process. Of course, this now further increases the likelihood that small to medium sized importers may find themselves facing an audit.

Are you ready for a Customs audit? What kind of internal controls do you have in place? The Sarbanes-Oxley Act requires private sector auditors to attest to and report on the assessment made by management of each publicly traded company on the effectiveness of internal control over financial reporting. Internal controls are a way of measuring the effectiveness of a company as a whole. The Focused Assessment team will review internal controls relating to import compliance. For example, are you maintaining records for five years from the date of entry (and five years from the date of final withdrawal for warehouse entries)? Do you have a copy of the Harmonized Tariff Schedule and the Customs Regulations? Feel free to contact us at [compliance@shapiro.com](mailto:compliance@shapiro.com) if you have questions about your import program or would like us to conduct a review of your processes.

## **TRANSPORTATION UPDATE**

### **March 2006**

#### **Far East**

Bunker Surcharges from Far East ports to the USA increased on January 1, 2006 and are effective until March 31, 2006. There is a good chance there will be another increase in April.

January 1, 2006 – March 31, 2006	
20' container	\$ 450.00
40' container	\$ 590.00
40' high cube container	\$ 660.00
45' container	\$ 760.00

The pendulum has started to turn in 2006. Added capacity from Asia to the West Coast will erode pricing on that trade lane. Rates are dropping almost daily to Los Angeles/ Beach as capacity seems to be growing every week. MSC is adding a new service with vessels holding 6750 TEU's from Yantian, Ningbo, Shanghai, Qingdao, Busan and Tokyo. This has helped reduce the rates to the west coast as they must find a way to fill up these vessels.

Evergreen and Cosco have announced that they will add a new all water service to the East Coast. It will focus on southern ports (Savannah and Miami) and will help free up space for cargo destined for the Northeast and Mid-Atlantic. Importers should be able to see a reduction in freight rates. Carriers will try to introduce a variety of surcharges to help keep up rates on all water services to the East Coast. The announced increases by the TSA (Transpacific Stabilization Agreement) carriers are as follows effective  
May 1, 2006

West Coast ports	\$ 150.00 per 40' container
Intermodal rail shipments	\$ 350.00 per 40' container
All water to east coast	\$ 400.00 per 40' container

We continue to anticipate that there will not be increases on May 1, 2006, especially on the West Coast from Asia.

## **EUROPE**

Bunker fuel surcharges that were increased on October 16, 2005 from Northern Europe to United States will stay the same through April 15, 2006.

Current bunker surcharges are as follows:

- |                    |                                |            |
|--------------------|--------------------------------|------------|
| • East Coast Ports | 20' containers                 | \$ 423.00  |
| • East Coast Ports | 40', 40' HC & 45' containers   | \$ 846.00  |
| • West Coast Ports | 20' containers                 | \$ 635.00  |
| • West Coast Ports | 40', 40' HC and 45' containers | \$ 1270.00 |

Carriers will raise their Currency Adjustment Factor from 4% to 6% effective March 16, 2006.

## **The Mediterranean**

The bunker fuel surcharge that went up on November 1, 2005 will remain the same through the month of March.

Bunker surcharges will remain as follows to Atlantic and Gulf ports from all Mediterranean ports.

20' container	\$401.00
40', 40' high cube container	\$802.00

Rates have dropped as there has been added capacity in the trade and fewer shipments to the United States. Rates for commodities such as ceramic tile are beginning to drop. Space is not a problem now. This is especially true from Italy.

## **Air**

Fuel surcharges are going back up worldwide.

Effective in late February, the fuel surcharge from Hong Kong went up from 0.46/kg to 0.52/kg. The slack season has officially begun now that Chinese New Year is over. Rates should remain stable through the end of April.

Capacity from Europe and Indian sub-continent remain steady. The fuel surcharge from Europe has gone up again. The current level from all markets using the Euro is 0.50/kg.

## **Export Ocean**

As more capacity enters the import trade, export rates will stabilize and go down. This is especially true from the USA west coast. Carriers have managed to keep the rates stable on the east coast however time will tell if they can maintain this. The new

CMA/CGM and China Shipping service from the USA east coast to Europe should add downward pressure on rates.

### **Domestic**

Domestic fuel surcharges (FSC) are on the rise again. Lately we have seen FSC in the 15-23% range. There is still a shortage of drivers nationwide. Port congestion is causing many truckers to back away from hauling containers.

### **Carrier News**

Atlantic Container Line (ACL) has announced that due to severe driver shortages they cannot guarantee that they will be able to arrange delivery on "thru" bills of lading prior to free time being up at ports and rail terminals. They will try their best but will not take responsibility. This is a trend that may grow as the driver shortage is causing problems all over the country.

China Shipping and CMA/CGM are still planning their new North Atlantic service commencing in March 2006. They will begin a direct service from Northern Europe with four 2500 TEU vessels. The vessels will call on the following ports: Le Havre, Antwerp, Rotterdam, Bremerhaven or Hamburg, Liverpool, New York, Baltimore, Norfolk and Charleston.

### **Port of Baltimore**

All containers arriving or departing from the Port of Baltimore will be subject to a port security charge of \$3.25 per container. This is a nationwide trend and the charge varies from port to port. The charge in Baltimore is one of the lowest that we have seen.

### **PierPASS TruckTag Program**

PierPASS has announced the TruckTag program which is intended to enhance security at the ports of Los Angeles and Long Beach by improving the process of checking trucks and drivers entering the terminal. Starting in March, PierPASS will be distributing RFID (Radio Frequency Identification) tags to be installed on trucks, similar to the EZPass devices used for toll collection. These tags will enable quick and secure check-in at the terminals. PierPASS expects to distribute 10,000 devices to trucking companies. The program is expected to cost \$1.2 million. This cost will be covered by the marine terminal operators.

## **SAMUEL SHAPIRO & COMPANY, INC. NEWS**

### **News from Our Charleston Office**

On July 16, 2005, the Arthur Ravenel, Jr. Bridge opened for business in Charleston, SC. At a cost of approximately six hundred million dollars, the three point five mile bridge is the largest cable stayed bridge in North America. The bridge is an eight lane highway that crosses over the Cooper River, which is the main shipping channel and also connects the downtown area of Charleston to Mount Pleasant, SC. There is also a run/walk lane on the bridge that allows for both runners and walkers to enjoy their choice of exercise. The bridge has also become a tourist attraction due to the beauty and magnificence of the structure and the amazing views available from the bridge itself.

This bridge replaces two obsolete bridges, the John P. Grace Memorial Bridge and the Silas N. Pearman Memorial Bridge. The John P. Grace Memorial Bridge opened in 1929 and the Silas N. Pearman Memorial Bridge opened in 1966. Both of these bridges have served their purpose and are in the process of being demolished. The elimination of the old bridges, once complete, will allow for the larger container ships to enter the shipping channel and utilize the port of Charleston, SC, resulting in the growth of our local economy.