SHAP TALK

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TRADE NEWS

Customs Changes Policy Regarding Post Importation Claims for Free Trade Agreements

On August 11, 2014, U.S. Customs and Border Protection (CBP) issued a memorandum providing updated guidance on handling post importation claims for free trade agreements. Certain free trade agreements such as NAFTA have specific post entry rules under 19 USC 1520(d) in which a preference claim must be filed within one year of the date of importation. Customs will not accept a protest as a means to make a NAFTA preference claim. A 1520(d) letter is the only option. Other free trade agreements that utilize 1520(d) are Chile, Oman, CAFTA, Peru, Korea, Colombia, and Panama.

In the new guidance document, Customs states that for programs that do not contain a 1520(d) provision, CBP will continue to allow unliquidated entries to be amended by filing a post entry amendment or post summary correction. What is causing controversy is the next sentence in the guidelines where Customs says that "amendments filed after liquidation will not be treated as protests under 19 USF 1514." The memorandum also says that it supersedes any conflicting guidance previously published, including, but not limited to, implementing instructions for free trade agreements, the FTA Guidelines, and the Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs (which has now been updated to remove the protest option).

This means that Customs will no longer accept a protest as a means to make a free trade agreement claim for a duty refund. The agreements affected by this are AGOA (African Growth and Opportunity Act), Australia, Bahrain, CBERA (Caribbean Basin Economic Recovery Act), CBTPA (Caribbean Basin Trade Partnership Act), Civil Aircraft Agreement, GSP (Generalized System of Preferences), Insular Possessions, Israel, Uruguay Round Concession on Intermediate Chemicals for Dyes, Jordan, Morocco, Pharmaceutical Products Agreement, and Singapore.

The protest period is typically about 16 months (about 10 months from the time of entry to liquidation plus 6 months after liquidation for the protest period). This new guidance from Customs now shortens the time to make a preference claim to less than 10 months since 1520(d) is not an option for the agreements listed above, and Customs requires that a Post Entry Amendment be filed no later than 20 days prior to liquidation. Whether Customs has the statutory right to make such a change will be up to the courts to decide as this new decision will very likely be challenged.

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Changes to Harmonized Tariff Slated for 2017

The Harmonized Tariff Schedule (HTS) undergoes a review by the World Customs Organization (WCO) every five years to keep up with changes in technology and trading patterns. The WCO has now approved amendments to the Harmonized Commodity Description and Coding System that will be incorporated into the HTS and will take effect in 2017.

Fish and seafood in HTS chapter 3 have numerous changes, including a new subheading for shark fins. There are also many new subheadings in the chemicals chapter 29, as well as changes for pharmaceuticals, fertilizers, and insecticides.

Non-alcoholic beer will have its own subheading, and sake will be named at the heading level.

The list of tropical woods for chapter 44 has been expanded to better monitor trade patterns. Bamboo flooring once again is undergoing a change with an update in classification for assembled flooring panels. Speaking of bamboo, bamboo kitchenware will now have its own subheadings.

Ceramic tiles will no longer need to be broken out between glazed and unglazed. Heading 6908 which is currently for glazed ceramic tiles will be deleted. Ceramic tiles will fall under heading 6907. Ceramic flags and paving, hearth and wall tiles will be broken out by water absorption coefficient. Ceramic tile importers should take note of this critical change.

As the HTS attempts to keep up with changes in technology, the heading 8469 for typewriters at long last will be removed from the tariff. LED lamps will have their own subheading under 8539.50. These popular lamps have been previously classified under 9405.40 and were recently reclassified under 8543.70 in a notice in the Customs Bulletin.

Another HTS update for new technology will finally provide for hybrid vehicles in Chapter 87.

A list of the 200-plus changes may be found on the International Trade Commission website.

Checking your EEI Filing

Electronic Export Information (EEI) is the electronic export data as filed in the Automated Export System (AES), which is now routed to the Automated Commercial Environment better known as ACE. This data is the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration (SED). This information is mandated to be filed through AES or AESDirect to the Census Bureau to help compile the U.S. export trade statistics, and is now also used for U.S. export control purposes by various government agencies.

Whether you as the United States Principal Party in Interest (USPPI) file the EEI directly or you have your forwarder file the EEI, you must check or audit your EEI filing to be sure all of the data elements are reported correctly. This is an important step in your auditing procedure. Be sure to keep copies of the EEI for five years from the date of export for your recordkeeping requirements.

You must ensure you receive and retain a copy of your EEI filing. Whether you print a copy from AESDirect or you receive an email with all of the pertinent information from your forwarder, below are the main items that should be checked closely to ensure compliance.

1. Do you have an ITN number? Once the EEI pertaining to an individual shipment is processed and accepted by AES, an Internal Transaction Number (ITN) is generated. This is your proof of filing for your transaction. The ITN number will start with an "X" followed by the date "20140822" and 6 (six) digits following the date. There are certain exemptions and exclusions from EEI filing and they can be found in the Foreign Trade Regulations (FTR) under 30.2, 30.8, 30.26, 30.36, and the bulk of exemptions under 30.37. You must have either an ITN number or an exclusion or exemption listed on your transport document for international export shipments that are required to be filed under the FTR.

2. Do you see a "shipment added" or "shipment changed" message to indicate that the shipment was accepted by AES? If your shipment was rejected by AES and received a "fatal error," you must correct the shipment prior to the cargo leaving the U.S.

3. Do you have a "verify message" associated with the ITN number? A shipment with a Verify Message receives an ITN, but some information must be verified, such as value, quantity or shipping weight. If a correction is necessary, update the shipment or instruct your forwarder to update and resubmit under the same shipment reference number. The shipment will be updated and the ITN will remain the same. However, if the shipment was filed correctly and you've verified that no changes are necessary, you don't need to resubmit. At times, your forwarder will ask you to verify this information if they are filing on your behalf. When there is a high value involved, Census will often contact the filer to be sure it was input properly. Check your invoice, packing list, and Schedule B/HTS numbers to be sure everything is correct.

4. Did you receive a compliance alert? The most common compliance alert that filers receive is "Response Code 700 – Shipment Reported Late; Predeparture." The alert is generated when a filer reports the shipment to the AES and receives an Internal Transaction Number (ITN) after the reported departure date. If your shipment is filed late, you must investigate why it was not filed timely because you may receive a penalty from U.S. Customs and Border Protection (CBP).

Here is a list of the compliance alert conditions that you need to be aware of and find out why the message was received and document the reason in case a penalty is issued:

- *Response Code 076 – USPPI Changed Post Departure*
- *Response Code 700 – Shipment Reported Late; Predeparture*
- *Response Code 701 – Shipment Reported Late; Postdeparture*
- *Response Code 702 – Line Activity Add Post Departure*
- *Response Code 703 – Line Activity Delete Post Departure*
- *Response Code 704 – License Type Change Post Departure*
- *Response Code 705 – License Number Change Post Departure*
- *Response Code 706 – Licensable Value Change Post Departure*
- *Response Code 707 – Used Vehicle(s) Change Post Departure*

For more information about these compliance alerts and other response messages, please review Appendix A of the AES Trade Interface Requirements.

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5. Is your consignee name and address correct? Confirm that your ultimate consignee name, address, and country is correct for the EEI filing and final destination.

6. Is your port of export correct? If the port of export is not reported correctly, CBP will issue a penalty. This is important for CBP because they send inspectors to look at various export shipments from the U.S. If the inspector is unable to locate the shipment at the port and it is due to the incorrect port code being transmitted in AES, CBP will not be happy. This can be confirmed with the carrier paperwork or the booking information from the forwarder. Please be careful with shipments crossing the U.S. border. The overland port where the shipment crosses the border must be shown. Example: Laredo or Buffalo-not the inland port where the shipment was loaded. Also verify that your mode of transport is listed correctly, especially with shipments crossing the border.

7. Is your export date correct? Confirm your time of departure with the carrier or forwarder and update it as needed in AES. CBP does expect this date to be updated to show the actual date of departure. Be especially careful entering the year in January when most people are used to keying the previous year.

8. If your shipment is under a license, exemption, or exception, is all of the information correct? Confirm license numbers, exemption citations, exception codes, ECCN numbers and all related information that must be reported along with these. Did you provide the correct license number or citation? Are the values and quantities reported correctly? This can cause a considerable amount of additional work if these fields are not reported correctly. Confirm these items as soon as possible to avoid any type of delay from Customs because something was reported incorrectly.

If you are unsure about any of the information provided by your forwarder or what you need to file in AES, please refer to our Shipper's Letter of Instructions, which shows all of the AES data elements and provides the FTR citations or contact compliance@shapiro.com.

TRANSPORTATION NEWS

September 2014 Update

INDUSTRY NEWS:

West Coast ILWU Labor Reaches Tentative Agreement for Health Benefits

The International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association released a joint statement on Tuesday August 26 regarding a tentative agreement for health benefits. This agreement is subject to agreement on other issues in the negotiations. Health benefits has been one of the biggest contention points between the two sides.

The five-sentence joint statement gave no further details on how negotiations are progressing. In particular, it was silent on whether the contract that emerges will be for three or six years. The possibility that the two sides would fail to agree on the health care issue raised the prospect that the agreement would be three years, versus the six-year duration of the previous two contracts. It is feared that the theory of a possible Republican-controlled Congress might repeal aspects of Obamacare. However the wording in the release points to the possibility that a three-year contract won't be what plays out.

The two parties have been meeting regularly since May 12, when negotiations officially began. As expected, they have been unable to reach an agreement before the contract expired on July 1. Both sides have jointly pledged on several occasions to keep cargo moving without disruption. Before talks began, it was noted that jurisdiction and terminal automation would also be haggled over during negotiations.

Retailers Worry and Change Plans Due to Lack of ILWU Contract

The labor uncertainty on the U.S West Coast is leaving retailers ill at ease. The contract negotiations have been going on for almost two months now, and retailers fear that the unrest will harm their ability to stock up for the upcoming holiday season. The lack of a contract leads some retailers to fear that there could be a lockout which would cause disruptions to their supply chains. Some companies are already making plans to divert shipments to U.S. east coast ports or nearby Canadian ports such as Port Metro Vancouver and Port of Prince Rupert.

Ningbo Strike Creates Backlog

The Ningbo Transport Association and Ningbo International Forwarders Association have agreed to a new guideline for container trucking rates which have resulted in increases of 12 percent. Prior to this agreement, the Ningbo truckers went on strike on August 18 through August 24, 2014.

In solidarity to the truckers, the forwarders in Ningbo stopped taking new container business during the week-long strike. This strike caused a backlog of shipments that could not move, and local warehouses were full to overflowing. Carriers and customs in Ningbo have taken full measures to get things back to normal, but the strike caused a backlog which should be resolved after the first of September.

OCEAN FREIGHT

Peak Season Remains Strong as Freight Rates Continue to Rise

The freight rate market has been frustrating shippers, and importers of goods from Asia have particularly felt the sting of ever-increasing rates. On the heels of the recent August 1 General Rate Increase (GRI), the carriers in the Trans-Pacific market have announced a September 1 GRI of $480/20', $600/40' and $675/40' high cube to the U.S. east coast, and $360/20', $450/40' and $450 to $500/40' high cube to the U.S. west coast and inland locations via the west coast. The GRI is expected to change as we enter the month of September, but these are the levels that are being reported as of this writing.

There are also GRI's announced for October for imports from Europe and the Mediterranean at $300/20' and $400/40' to U.S. east coast, and $450/20' and $600/40' to U.S. west coast. We expect the actual amount to change as we get into October.

Export rates are expected to rise in October as well by $200 to $300 per container to many markets as the carriers are now announcing an Export Peak Season, which is not normally the case this time of year.

Both the import and export freight markets remain very strong so the demand on vessel space and container equipment keeps the market tight and rates elevated as a result.

Containerized Imports Soar

According to the National Retail Federation (NRF), U.S. container imports soared to record breaking numbers in July over previous years. One of the reasons behind the increase was the fear of a possible strike on the U.S. west coast. Some retailers have been stocking up inventory to lessen any possible impact from a strike. July's total containerized imports were 1.7 million TEU's which is 5.8% higher than the total in June and almost 5% higher than July 2013. The NRF also predicts that volumes for retail merchandise are on pace to total 1.54 million containers in August.

Peak season is hard to identify while it is happening, especially because data comes out weeks and months after the fact. Some economists think that the peak of this year's import season could be July. Volume surges to both coasts on the U.S. have supported higher spot rates in recent weeks.

NRF is forecasting a total of 17.1 million TEU's of retail merchandise for 2014 which is 5.2% higher than in 2013. In addition, U.S. GDP has increased in 11 out of the last 12 quarters.

AIR FREIGHT

China Airfreight Market Peak Season Begins

Peak season for airfreight shipments out of China starts September 1 and will last through December 31. As a result, rates will increase and available capacity will be at a premium. This peak season will also see a launch of prominent technology. This will make shipping anything to Chicago, Los Angeles, JFK, Atlanta, Miami and Vancouver especially challenging. In order to accommodate these space issues, it is recommended to book as far in advance as possible.

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Asia Pacific Airfreight Market Continues to Grow

Preliminary air cargo traffic reports from Asia Pacific indicate continued growth in July with an increase of 6.4 percent over last year. The slow slight growth over the past seven months indicates a long awaited recovery. The sustained trend is positive, however additional capacity keeps yields low.

Iceland Volcano Threatens Air Routes

In mid-August, the Icelandic Meteorological Office posted warnings of excessive seismic activity under the Bárðarbunga volcano. We all recall the 2010 ash cloud created by the eruption of Icelandic volcano Eyjafjallajökull that drifted over Europe disrupting air space and subsequently over 100,000 flights causing cancellations and backlogs for days. There are now warnings and programs in place to better deal with such a crisis should it happen again. The latest news is that the activity has reduced and there have been no further warnings in recent weeks.

DOMESTIC NEWS

Truck Driver Pay Issues Causes Driver Shortage in U.S.

It is becoming more difficult for independent drivers as well as trucking company employees to make a living that allows them to stay in the industry. A recent survey of 2000 drivers revealed that 79 percent of respondents listed pay as the top reason for deciding where to work. Many trucking companies struggle to attract drivers as a result as they deal with slim profits in an industry where costs continue to rise.

About 70,000 trucking firms have declared bankruptcy in the past year so the driver pool is on the decrease throughout the country. Importers, freight forwarders, and Customs brokers are having trouble finding enough drivers to cover their import shipments.

New regulations restricting driving hours have forced many truckers to find local jobs that would allow them to sleep in their own beds every night. It used to be common for long-haul drivers to make the best money in the industry but they are now required to have more downtime. This downtime means less money for the drivers, making independently owned trucking companies unprofitable.

Local trucking jobs are becoming less attractive as well as drivers are often forced to spend several hours getting in and out of ocean freight container terminals in many ports. Some companies have dealt with this by boosting driver pay but many drayage companies struggle to hire and keep drivers. Local dray rate competition is stiff and the local dray rates are often so low that it makes it difficult for trucking companies to afford to pay the drivers a decent salary.

The survey found that 43 percent of drivers had recently left a previous job. 42 percent of drivers surveyed revealed that they held 3 to 5 jobs in the last 10 years. The big winner in the industry is the corporate recruiters because there is such a demand for truck drivers.

SAMUEL SHAPIRO & COMPANY, INC. NEWS

Employee of the Month

As previously featured in Shap Talk, Shapiro 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 Janice McEachern, Classification Specialist in Charleston, 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.

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