Shap Talk

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WE WANT TO HEAR FROM YOU!

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TRADE NEWS:

Guidance on Preserving Refund Rights for Products Excluded from Section 301

Importers of products subject to Section 301 tariffs should remember to keep a close eye on the liquidation dates for excluded products, as many unliquidated entries from 2018 affected by the additional duties are fast approaching liquidation deadlines.

What is liquidation?

Liquidation is the process by which U.S. Customs and Border Protection (CBP) completes its review of an entry and makes its final determination in respect to the duty rate. Typically, liquidation occurs 314 days from the date of entry into the U.S. Once the entry liquidates, the importer (or their Customs broker) has 180 days from the liquidation date to file a protest.

Per CBP CSMS # 19-00260, if your company is awaiting a final determination as to whether or not your product will be granted an exclusion, or you are concerned that an entry may liquidate before USTR renders a decision on the exclusion request, and you plan to apply for exclusion, your alternatives are:

- To request an extension of the liquidation deadline, and file a PSC no later than 15 days before the extended date of liquidation; and/or
- To file a protest within the 180-day period following liquidation. When filing a protest, the impacted party should identify the pending product exclusion decision from USTR as a basis for the protest. Upon receiving USTR's decision on the product exclusion, the filing party should submit the exclusion information to CBP, as additional information pursuant to 19 C.F.R. 174.28.

If a protest is filed, CBP will postpone making its determination on protests that include a claim identifying a pending product exclusion. Once USTR completes the exclusion processing, CBP will process these protests pursuant to USTR's exclusion determination. That is, CBP will refrain from denying or granting a party's protest before the importer receives a final determination from USTR regarding its product exclusion request.

If you have any questions or concerns about the liquidation of your entries, please reach out to compliance@shapiro.com and we will be happy to assist you.

Salmonella Outbreak Leads to First FSVP Warning Letter

The Food and Drug Administration (FDA) issued its first Foreign Supplier Verification Program (FSVP) warning letter to an importer that failed to meet FSVP standard requirements, signaling the agency's intent to more stringently enforce the foreign supplier requirements, particularly as part of an outbreak investigation. Over the past two years, FSVP inspections have been focused on assisting importers with understanding the requirements and taking corrective measures.

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This warning letter follows the May 2019 Salmonella outbreak, which was linked to tahini from Israeli manufacturer Karawan Tahini and Halva. The FSVP inspection issued the warning letter stating the importer, Brodt Zenatti Holdings LLC, showed 'significant violation of the FSVP Rule, which requires that importers perform certain risk-based activities to verify that food imported has been produced in a manner that meets applicable U.S. food safety standards.'

They have 15 working days from receipt of the warning letter to respond with their plans to correct the violations.

If they are unable to furnish plans or proof of the amended violations, they may be subject to Import Alert #99-41 – Detention without Physical Examination of Human and Animal Foods Imported from Foreign Supplies by Importers Who Are Not in Compliance with the Requirements of the FSVP Regulation – which was established on July 31, 2019. It states that an importer of specific food or foods from a specific foreign supplier may be added to the Red List of an import alert, which would detain the product without physical examination, due to lack of compliance regarding FSVP.

It's important to note that this import alert only applies when the specific food items are imported by this specific supplier and the identified importer. The alert does NOT extend to other importers or other food from the supplier.

The FDA will continue their FSVP inspection efforts as they work on ensuring foreign supplied food items have the same health standards and qualities as U.S. based foods.

Are you having trouble ensuring your suppliers are FSVP compliant? Shapiro can help, so don't hesitate to reach out to us at compliance@shapiro.com.

Intellectual Property Rights – Fake Goods, Real Dangers

A vast increase in counterfeit goods entering the United States poses challenges for consumers, the private sector and the U.S. agencies that enforce intellectual property rights (IPR). Specifically, growth in e-commerce has contributed to a shift in the sale of counterfeit goods in the United States.

U.S. Customs and Border Protection (CBP) has substantial resources designed to target, intercept, seize and forfeit shipments containing counterfeit goods. Owners of trademarks and copyrights can and should record their registrations with CBP to assist officials in monitoring and preventing the importation of foreign goods into the U.S. CBP enters any recorded information into an electronic database that is available for officials to use at all 329 U.S. ports of entry.

What is infringement?

IPR infringement involves the use of protected intellectual property rights without the explicit authorization of the trademark or copyright owner.

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How do you know if your imported product is subject to IPR restrictions?

It can be difficult to determine if a product is subject to IPR. However, some of the indicators and flags that CBP officials look for include, but are not limited to:

- Nationally recognized brands or trademarks
- Logos that incorporate licensed characters
- Look-alike brands that are similar in style to a nationally recognized brand (knockoffs)
- All recorded or printed media
- Color combinations that mimic a trademarked brand or trademark
- Products bearing labels such as 'TM' or 'patent pending'

Companies should adhere to the following best practices to help prevent the importation of goods involving IPR products:

- Get permission from IPR owner and any seller/manufacturer to use the protected product
- Include a copy of a letter from the IPR owner specifying the types of products the importer is permitted to import with the commercial shipping documents
- Any payments made to any party to authorize use of an intellectual property right may be considered part of the dutiable value of the imported product
- Perform pre-shipment inspections of products to avoid infringements and severe penalties

If you have any questions or concerns about Intellectual Property Rights, please reach out to our compliance experts today!

U.S. House Bill Seeks to Quantify Benefits, Provide Suspension Relief for C-TPAT Members

In mid-July, Rep. Clay Higgins, R-Louisiana, introduced the 'C-TPAT Reauthorization Act' in the House of Representatives, which marks the first reauthorization of CBP's Customs—Trade Partnership Against Terrorism (C-TPAT) program in 13 years.

The legislation is aimed at clarifying and quantifying the various benefits associated with program membership, which many have viewed as unclear and murky over the years. A report from the U.S. Government Accountability Office in 2017 confirmed this sentiment, finding that the program did not provide proof of its merit to importers. Nevertheless, CBP continues to assert that C-TPAT members are three and a half times less likely to face a Customs examination and seven times less likely to face an intensive exam.

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Following the recent suspension of Mediterranean Shipping Company's (MSC) membership in the C-TPAT program, the legislation also seeks to create a formal mechanism to suspend or expel members from the program if they fail to meet minimum security requirements, pose a threat to national security, or provide false or misleading information. Should a member be expelled or suspended, the legislation also outlines requirements to mitigate the financial hardship for the member.

The legislation has been heralded by industry experts as an important step in encouraging membership in the program, with the Express Association of America – representing UPS, FedEx, and DHL – welcoming it as the 'most significant legislative expansion of trade facilitation measures in several years.' With bipartisan support from House members from districts heavily reliant on U.S.- Mexico trade, the legislation is expected to easily pass the House.

WTO Delivers Mixed Ruling on U.S. Duties on Chinese Goods

On July 16th, the World Trade Organization (WTO) delivered its judgement on U.S. sanctions regarding Chinese subsidized goods produced by state-owned enterprises. The trade body affirmed that the underlying U.S. Commerce Department policy to determine if Chinese state-owned enterprises received unfair subsidies aligned with WTO rules, but decried the U.S. method employed to calculate its duties, which it advised relied upon third-country prices, did not follow WTO anti-subsidy rules.

State-owned enterprises can benefit from a wide variety of government subsidies ranging from extremely low-cost or free energy to tax credits and access to financial capital at low, subsidized rates.

While both the office of the U.S. Trade Representative (USTR) and the Chinese Ministry of Commerce hailed the ruling as a victory, the larger benefit of the ruling is the additional clarity provided as to when Chinese state-owned enterprises can be classified as a 'public body'.

When designated as a public body, WTO members have the leeway to enact countervailing duties. The office of the USTR expressed frustration that while the ruling supported this interpretation of the WTO rules, the rejection of duties calculated from third-country prices undermined WTO rules, as it instead encouraged the reliance on distorted market prices to calculate subsidies.

The ruling adds further support to a trilateral initiative between the U.S, Japan, and European powers to modernize global trade rules, which they have argued struggle to adapt to China's rapid rise and reliance on market-distorting subsidies to state-owned enterprises. This latest interpretation represents the largest substantive change to WTO trade rules since the failed Doha Round of trade negotiations launched in 2001.

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U.S. Threatens Section 301 Investigations into Vietnam Amid Trade Surplus

U.S. Trade Representative (USTR) Robert Lighthizer announced that his office is considering launching formal Section 301 investigations into Vietnamese trade actions in light of Vietnam's inability to cut the trade deficit and "resolve market access restrictions" that U.S. officials allege unfairly favor Vietnam.

When the U.S.-Vietnam trade surplus reached $45.9 billion earlier this year, Panjiva, an internationally renowned trade intelligence firm, published an analysis of 400 Chinese products that claimed Vietnamese origin to mitigate the Section 301 tariffs, which highlighted lopsided and unfair trade practices for the U.S.

In wake of such troubling data, Vietnam's government announced that it would begin proactively pursuing exporters avoiding U.S. tariffs via transshipments through the country, in an effort to maintain positive relations with the United States. However, the most recent statistics highlight Vietnam's inability to control the issue despite its prior announcement, as U.S. imports from Vietnam (many of which are likely to be transshipments from China) rose another 32.8% between March and May 2019, raising the U.S. trade deficit to $47.1 billion.

The data also revealed that U.S. ocean imports of electrical equipment and electronics from Vietnam rose 95.3% year-over-year in Q2.

Vietnam is currently the 17th largest trading partner for the U.S., with $58.9 billion in total (two way) trade during 2018. Should the USTR implement Section 301 tariffs on Vietnamese products, supply chains everywhere are in for a doozy.

Want more information? Shapiro's Section 301 Tariff News page can help you evaluate the impact on your supply chain and assist you in weighing various Importer Options, such as alternative sourcing models, to reduce the risk to your supply chain efficiency.

ICC Currently Evaluating Proposed Changes to 2020 Incoterms

Every 10 years, the International Chamber of Commerce (ICC) evaluates and revises the International Commercial Terms, better known as Incoterms®, as a means of creating greater uniformity and effectiveness across the shipping industry. The latest version was released in 2010, which means it's time for the Committee to provide another update!

The main Incoterms changes being considered at this time are as follows:

Removal of FAS

FAS (Free Alongside Ship) is an Incoterm used infrequently, usually for the exportation of certain commodities (cereal, minerals), and contributes little to FCA (Free Carrier Alongside) the term used when merchandise is delivered at the port of departure in the exporter's country. The committee is instead considering making an Incoterm specifically for cereal and minerals.

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Unfold FCA in 2 Incoterms

Conversely, FCA is the term used most frequently, as it represents 40% of all trade. Accordingly, the ICC is considering the creation of 2 FCA terms – one for terrestrial and one for maritime delivery.

FOB and CIF for container shipping

The committee is considering bringing back the terms FOB (Free on Board) and CIF (Cost, Insurance, Freight), instead of the FCA and CIP (Cost and Insurance Paid to) used for non-container shipments. This wouldn't be an earth-shattering change, however, as FCA and CIP were only added to the Incoterms list beginning in 2010.

Creation of new Incoterm – CNI

The ICC is debating the creation of CNI (Cost and Insurance) to bridge the gap between FCA and CFR/CIF (Cost and Freight/Cost, Insurance, Freight). Currently, FCA includes the cost of international insurance on account of the seller-exporter, while CFR/CIF does not include the cost of freight. With the new arrival term CNI, the risk of transport would be transmitted from seller to buyer at the port of departure.

2 Incoterms based on DDP

To alleviate questions surrounding the party responsible for paying Customs fees, the ICC will evaluate the creation of 2 Incoterms to replace DDP (Delivered Duty Paid). Delivered at Terminal Paid (DTP) would be used when the goods are delivered to a terminal (port, airport, transport center, etc.) in the country of the buyer, and the seller assumed the payment of Customs duties. Delivered at Place Paid (DPP) would be used when the goods are delivered at any place other than a transport terminal, and the seller assumes the payment of the Customs duties.

Other issues and updates being evaluated this round include:

- Transportation security
- Regulations on transportation insurance
- Relationship between the Incoterms and the International Sale Contract

Incoterms 2020 will be released later this year and will go into effect on January 1, 2020.

The ICC will meet periodically over the next few months to discuss these issues and re-evaluate internal policies and procedures to take into account their effectiveness moving forward.

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Reorienting Sourcing for a Trade War Economy

As the U.S. trade war with China drags into its second year, it may be necessary to take a thorough accounting of your supply chain's sourcing strategy to ensure that you are mitigating short and long-term trade risks at the lowest possible cost to you.

Here are some of the factors you should scrutinize when evaluating potential cost impacts, product quality and reliability:

- Supplier Quality: Can the manufacturer produce the volume of goods necessary, with the appropriate quality levels, and at a reasonable cost? Can all of this be done within a practical lead time?
- Supplier Compliance: Is the manufacturer the actual manufacturer, or a pass-through for made in China goods?
- Origin Infrastructure: Can raw materials and goods be moved domestically and internationally with reasonable lead times?
- Logistics Network: Can the manufacturer easily source the necessary raw materials upstream? Downstream, can the manufactured goods be shipped internationally with an acceptable transit time and with limited transportation risk - i.e. transshipment or other delays?
- Trade Incentives: Does the origin country offer any trade incentives to international buyers? Does the country of destination have Free Trade Agreements (FTAs) or other trade incentives, like the Generalized System of Preferences (GSP) extended by the U.S. and EU to less-developed countries?
- Trade Deterrents: Has the destination country enacted trade barriers to goods flowing from the exporting country or are existing trade incentives under threat of revocation?
- Origin Government: Are there specific taxation or regulatory concerns which could impact either your manufactured goods or their inputs? If you are investing in the country, how easy are the national and local governments to work with?

The above factors can help guide your decision-making process and can be supported by quantitative analysis of the costs, via a landed cost comparison, associated with delivering from each location under consideration. Remember that not all costs can be quantified so easily, so if quality or reliability concerns are a greater focus for your organization than cost factors, be sure to incorporate more quantitative measures when balancing your options.

Finally, consider whether a change from China is even necessary. While the shift away from China may initially appear attractive due to the current trade uncertainty, a thorough analysis of the financial, quality, or reliability costs of implementing an alternative could prove to be significantly higher.

Today's trade uncertainty can be unsettling, but with proper due diligence you can ensure that your supply chain has the resiliency to confront and adapt to this changing global economy. Shapiro's compliance team can be a great asset to help you navigate not only the trade incentives or barriers for your alternative's analysis, but also identifying the potential duty mitigation options should you choose to continue sourcing from China.

Want more information? Our Section 301 Tariff News page can help you evaluate the impact on your supply chain and assist you in weighing various Importer Options, such as sourcing alternatives, to reduce your supply chain risk.

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CBP to Begin Internal System Modernization Updates

Last month, U.S. Customs and Border Protection (CBP) revealed plans to unveil a new 21st Century Customs Framework within the next year during its annual Trade Symposium on July 23rd.

CBP will focus on three areas of concern that arose throughout the public comment period:

- Streamlining the entry process
- Seamless information sharing
- Creating a robust framework for the e-commerce environment

Streamlining the entry process

CBP's Deputy Executive Director for trade, Brandon Lord, expressed desire to simplify the import process by leveraging import data from places where it already exists within the supply chain, in lieu of reducing the amount of data it requests from importers specifically.

Seamless information sharing

Government officials have requested a better information system to broadcast 'bad actors' and emerging 'trends to evade U.S. trade laws' in an effort to reward those who play by the rules in the supply chain.

Similarly, CBP hopes to improve the timeliness and communication of information directly to traders at ports. This is due, in large part, to a series of holding patterns at ports as a result of either CBP, the broker or the trader awaiting pertinent information. According to Lord, they want to determine "how do we better exchange information on a more constant, consistent basis so there's just less waiting on both sides?"

Creating a robust framework for the e-commerce environment

CBP's e-commerce initiative is looking at which types of advanced data are "most appropriate" and is determining how to work with traditional and emerging supply chain actors to help with compliance.

According to Lord, "We need to take a look at rules and responsibilities within those supply chains and what roles and responsibilities the actors should have in the importation process."

Dealing with Seasonal BM Stink Bugs Down Under

As is customary during this time of year, European and North American ecosystems are being heavily impacted by the presence of the Brown Marmorated Stink Bug (BMSB). In an effort to protect and preserve their natural ecosystems through this annual cycle of BMSB insurgence, Australia and New Zealand have issued seasonal importation requirements in an effort to temper the growth of the population within their respective countries.

In accordance with the regulations posited by each country, all shipments set for importation into Australia are assigned a degree of risk. Any shipment that is deemed 'high risk' is required to be fumigated/treated prior to loading. Please note – all shipments originating from the U.S. fit the 'high risk' designation.

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While carriers' response to this new regulation has been limited thus far, CaroTrans has issued the following measures with immediate effect:

- A completed BMSB form will be required for all shipments.
- For LCL, shipments deemed as HIGH RISK by Australia's Department of Agriculture and Water Resources (DAWR) or New Zealand's Ministry of Primary Industries (MPI) will be subject to the fee of $30 w/m with a minimum of $250 per shipment.
- Sulfuryl Fluoride will be the treatment used.
- If your shipment is deemed to be sensitive to the fumigant and CANNOT be fumigated, we will be offering non-fumigated services based on availability.

These new measures will be in effect until further notice.

Don't let the "stinkiest" time of year make a mess of your shipments Down Under! Contact our compliance experts today if you regularly export from the U.S. to Australia and/or New Zealand and are unsure of how these new measures may impact your supply chain.

Amazon Accelerator Program Offers Additional Support to Sellers – For a Cost

Amazon has unrolled a new program offering product reviews, prominent display and marketing support for some of its independent merchants in exchange for Amazon gaining the right to purchase the merchant's brand at a fixed cost. For a flat fee of $10,000, the Amazon Accelerator program would then retain the right to purchase a brand by giving merchants 60 days' notice at any future date.

Merchants cannot sign up for the program unless they receive an invitation from Amazon directly. In addition to the option of participating, sellers are given the ability to select which brands or product lines (if they have multiple) they would like to enter in the program.

As an added benefit, Amazon is contractually obligated to retain the original owner of the brand as the exclusive supplier for two-years after the purchase/acquisition date.

The company hopes the program will acquire a stockpile of independent brands available exclusively via Amazon's Marketplace. However, according to recent reports, Amazon is yet to obtain any brands through this program.

Contact our marketing experts today for more information on how Shapiro can collaborate with you to build an effective global supply chain for your e-commerce business!

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TRANSPORTATION NEWS

Repeated Drug Busts Deliver Huge Blow to MSC

U.S. Customs and Border Protection (CBP) suspended Mediterranean Shipping Company's (MSC) C-TPAT certification for 90 days following the largest seizure of cocaine by federal authorities in U.S. history on June 18 at Philadelphia's Packer Marine Terminal.

U.S. authorities have detained 8 crew members from the MSC Gayane in connection with smuggling approximately 20 tons of cocaine, valued at $1.3 billion, aboard the vessel.

How Did Authorities Know?

Officials explained that many smugglers today have grown accustomed to and confident in their ability to get away with large shipments of narcotics via commercial shipping between countries. Many operate under the assumption that most cargo on vessels goes relatively unchecked and are under the impression that the phony container seal labels used to 'reseal' containers filled with contraband will go unnoticed.

Since the beginning of this year, MSC has already experienced three massive drug busts. The Gayane shared similar characteristics with the previous busts in February and March of 2019. All three busts involved MSC vessels stopped at U.S. east coast ports in route from South America to Europe.

Authorities believe MSC is a convenient and attractive target for drug cartels since it is one of the only carriers offering Transatlantic sailings from South America to Europe.

Although the MSC Gayane was approached twice by a dozen boats during its calls at Chile, Peru and Panama, it appears that the contraband went undiscovered until its arrival in Philadelphia. To help mitigate the risk of future drug busts, MSC announced plans to begin tightening security on-board all vessels calling South American ports along the Pacific coast, which will include additional security personnel, cameras and routine cabin checks for crewmembers.

Interested in finding out more, or becoming a CTPAT partner? Contact compliance@shapiro.com for assistance!

Carrier Zeamarine Leads the Way on IMO 2020 Bunker Adjustment

On July 26th, Hamburg-based multipurpose/heavy lift carrier Zeamarine announced its bunker adjustment policy to mitigate the cost of compliance for the IMO 2020 low sulfur mandate on January 1st.

Zeamarine's policy will first introduce a bunker adjustment on irregular 'tramp' sailings based on voyage quotations as of September 1st, with a fee per freight ton based on the difference between the traditional 3.5 sulfur IFO 380 fuel oil, classified as a 'high-sulfur fuel oil' (HSFO) under IMO 2020, and marine gasoil (MGO). For defined liner service, the carrier will levy a surcharge of $35 per freight ton for all bookings on or after September 1st for all volumes and regions.

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Zeamarine has pointed to the significant costs of preparation for the new regulations, which includes pulling vessels to clean tank and cycle the new HSFO blends, which need to occur in the months approaching the January 1st mandate. Ocean carriers and refiners alike are rushing to prepare for the January 1st mandate and shippers could begin to feel the squeeze as carriers are pushed into more expensive alternatives as a bridge to lower-cost, but nascent, solutions.

For carriers like Zeamarine, MGO blends, a proven, but expensive low-sulfur fuel used in current emission control areas (ECAs) globally, will remain the primary solution until the very low-sulfur fuel oils (VLSFO) currently entering the market become more widely available.

VLSFO adoption has been slow and an energy analysis from IHS Markit suggests that refiners will only be able to meet half of global demand by 2020 and with different blends at different ports, which raises the potential for engine compatibility issues as carriers work towards standardization. The possible adoption issues with VLSFO could compound carrier costs, with a surge in demand for MGO ultimately driving up bunker costs.

Contact our marketing experts today for more information regarding the IMO's 2020 Low Sulfur Mandate.

Air Cargo Update – Batteries Are Back!

Cathay Pacific Cargo's new fire-containment bag just made the shipping of rechargeable lithium-ion batteries in larger quantities a bit safer and easier.

Shipping the batteries by air has been a problem since 2016, when most carriers completely banned carriage of the batteries shipping as standalone items (not contained in equipment) due to reports that aircraft fire suppression systems could not extinguish a lithium battery fire.

Cathay's fire containment bag consists of two sizes, carrying up to 30 kg or 50 kg each, and will be allowed on their freighters. The FAA approved bag can contain a fire by limiting the oxygen supply and providing an escape for the smoke which would then trigger smoke detectors in the cargo hold.

It is important to note, however, that the bags are not certified to carry non-rechargeable lithium metal batteries.

Please contact our air cargo specialists with any questions about the new requirements.

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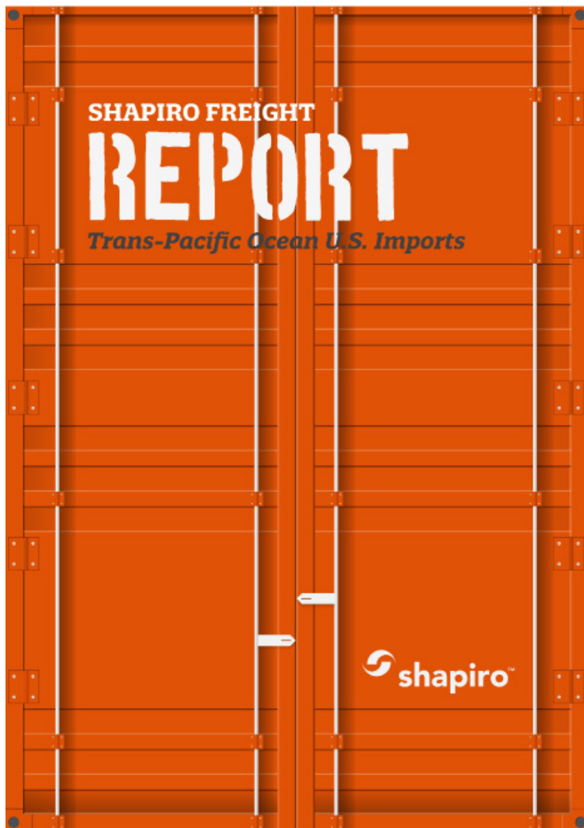
Shapiro Freight Report

This high-level, monthly review of the U.S. import freight market provides key insights into the tumultuous world of international shipping. From carrier alliances to labor strikes, Shapiro covers the pertinent information logistics managers need to know. Check back monthly to ensure you don't miss key industry insights!



The Plunging Demand Line

A plunging neck line on a stylish dress can inspire attention, admiration, and a poet's musical words of joy. A plunging demand line for Chinese imports inspires only consternation and fear for ocean carriers, for China, and for people not in favor of a global recession...

Click here to read more....

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