



“SHAP” TALK

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TRADE NEWS

Plant and Plant Product Import Declaration

Last month's issue of "Shap Talk" outlined two pieces of legislation from the 2008 Farm Bill – the First Sale Declaration and the Softwood Lumber Declaration. Another provision in the Farm Bill with a significant effect on importers is the plant and plant product declaration. The Farm Bill amended the Lacey Act, the nation's oldest wildlife protection statute, to strengthen the protection of trees and plants that may have been illegally harvested. Under the Lacey amendment, it will be illegal to import any plant or plant product without a declaration made at the time of importation.

What is in the declaration?

The declaration must include the scientific name of the plant (genus and species), value, quantity, and name of the country from which the plant was taken. If the genus and species is unknown, the declaration must contain the name of *each plant species* which *may* have been used to produce the product. If the country from which the plant was taken is unknown, the declaration must contain the name of *each country* from the plant *may* have been taken. If a paper or paperboard product includes recycled material, the declaration must include the average percentage of recycled material content.

We don't know yet what is meant by value – for example, just the value of the wooden buttons on a wool sweater or the value of the entire product? And bear in mind that the country from which the plant was taken will not necessarily be the same as the country of origin of the imported product.

What is included?

Any plant or plant product must have a declaration filed at time of entry. This means conceivably anything containing wood or paper – for example, furniture, flooring, books, toothpicks, paper plates, toys, etc. Any item that is made from a plant may be covered – food and food ingredients, wine (the wine itself, the cork, and the paper label on the bottle), pharmaceuticals, blue jeans made from cotton, rubber gaskets in machinery, rayon apparel, etc.

There is no de minimis exclusion to this requirement. That is, the value or quantity of the imported item will not be a factor as to whether or not you will need to file the declaration.

Please note that plant and plant products used exclusively as packaging material to support, protect, or carry another item (such as cartons, crates and pallets) are excluded from the declaration requirement, unless the packaging material itself is the item being imported.

The U.S. Department of Agriculture (USDA) has said that "common cultivars" and "common food crops" will be excluded. USDA and the Department of the Interior are currently working to define what these "common" items are. The various federal

agencies involved are looking to Congress for clarification of exactly what may be covered. The plant/plant product declaration has the potential to affect 80 out of 97 chapters in the Harmonized Tariff. 30,000 shipments a day could be subject to this new requirement. Think about labels on products, owner manuals, product registration cards, hang tags – the list of possibilities is staggering.

We have not heard of any exceptions for special entry types such as carnets, temporary importations, U.S. goods returned, personal effects, mail shipments, or diplomatic shipments, to name a few.

When does this go into effect?

According to the law, the effective date is December 15, 2008, but enforcement will not begin until April 1, 2009. It is expected that the declaration will be voluntary from December 15th until April 1st. Come April 1st, the implementation will be phased in, and is anticipated to start with forestry products. There is currently no formal implementation schedule or list of products for each phase, if that is how the implementation will work.

Can the information be filed electronically?

Customs & Border Protection (CBP) is exploring the possibility of filing the declaration electronically using the legacy U.S. Fish & Wildlife system. At this time, the declaration will have to be filed on paper (and we do acknowledge the irony of millions of paper declarations for a provision meant to help the environment). The electronic filing is expected to be in place for the April 1st deadline. If not, that deadline possibly could be pushed back. While Congress has mandated the collection of this information, they have not provided any funding for the data collection.

Will there be penalties?

The Lacey Act does provide for criminal and civil penalties for failure to comply. Civil fines are up to \$10,000. Criminal prosecution is possible. Merchandise can be seized. The Lacey Act amendment comes under the purview of the USDA and will be enforced by USDA and CBP.

How can I learn more?

U.S. Customs and the USDA will be conducting outreach to the trade community. FAQ's are under development. And please stay tuned to "Shap Talk" as we will endeavor to provide you with the latest information.

Enforcement begins October 1, 2008 for Mandatory Pre-Departure Filing of Export Cargo Information through the Automated Export System

This is a reminder to all exporters to ensure timely filing of your Electronic Export Information to Census. Census has advised that penalties will be issued if your shipment is not filed pre-departure adhering to the time frames set forth by the U.S. Census Bureau.

Non-USML Shipments are to be filed as follows:

Vessel cargo

24 hours prior to loading cargo on the vessel at the U.S. port where the cargo is laden.

Air cargo

2 hours prior to the scheduled departure time of the aircraft.

Truck cargo

1 hour prior to the arrival of the truck at the United States border to go foreign.

Rail cargo

2 hours prior to the time the train arrives at the U.S. border to go foreign

Please remember that most carriers want this information earlier than the time frames set forth by Census. Most carriers have a “no docs, no load” policy. This means they must have the ITN number or an exemption listed on the transport document or your shipment will not be loaded. All ITN formats and exemption formats must meet the new criteria set forth in the Federal Register On June 9, 2008.

If you are unsure of your obligations under the newly revised Foreign Trade Regulations, please contact compliance@shapiro.com for assistance.

To view the complete Federal Register notice, we are providing this link:

<http://edocket.access.gpo.gov/2008/pdf/E8-12627.pdf>

Congress Reconvenes Following Summer Recess to Address Trade Related Issues

The U.S. Congress reconvened from its summer recess on September 8th for its final session in 2008. The session is to adjourn on September 25th, although it’s possible that they could reconvene as a “lame duck” session following the November presidential election. A number of trade related issues are slated to be addressed time permitting.

The following list is not all inclusive, but it represents some of the significant issues that could be addressed.

- It has not been determined whether the Generalized System of Preferences (GSP) and the Andean Trade Act (ATPA) will be reauthorized this year. They both expire on December 31st. The House approved a bill on July 29th that would extend GSP for another year without any changes, but it does not address an extension for ATPA. It’s possible that the Senate may act on the GSP bill later this month. On September 29, 2008, Congress voted to extend GSP and the ATPA for another year.
- The Senate Judiciary Committee approved legislation on September 11th that would improve intellectual property rights (IPR). The House also passed similar legislation in a slightly different version earlier in the year. The House and Senate have approved a revised version of the IPR bill and it will now go to the President to be signed into law.

- It appears that food safety legislation including legislation on imports will most likely be postponed until 2009. On July 31st a bill was introduced into the Senate to provide facility and importer registrations with the Food and Drug Administration (FDA), a qualified importer program, import certifications, mandatory recalls, foreign facility inspections, etc. To date no action has been taken on that bill.
- The US- Columbia Free Trade agreement (FTA) may be addressed in the lame duck session if it occurs. The Bush administration is pressuring for a vote, but House Speaker Nancy Pelosi has stated that Congress needs to address domestic economic issues first such as a second stimulus package bill. The Panama FTA is tied into the Columbia FTA. The Bush administration would like Congress to address the current FTA's in the order that they were negotiated, that is, Columbia, Panama, and Korea. The Panamanian agreement has now been freed up for approval, but the Panamanian government has stated that they will not challenge a change in the proposed agreement approval hierarchy. There's probably no chance that the Korea FTA will be approved this year given unresolved issues with the Korean government.
- It's possible that the Byrd Amendment could be reinstated in a World Trade Organization (WTO) compliant version. The Byrd Amendment required US Customs to distribute antidumping and countervailing duties to domestic producers of the products covered that suffered injury from the importation of said products.

FDA Proposed Rule for Food Refused Admission into U.S.

The Food and Drug Administration (FDA) has issued a proposed rule that would require owners or consignees to label imported food that is refused entry into the United States with a label that reads, "UNITED STATES: REFUSED ENTRY." As part of the agency's high priority focus on food safety, FDA is taking this action to prevent the reintroduction of refused food into the U.S. In general, when FDA refuses to admit a food into the United States, the food must be exported or destroyed within 90 days. However, instead of simply exporting or destroying the refused food, some unscrupulous persons "port shop" and attempt to bring the refused food back into the U.S. by shipping it to another port in the hopes that the food will be admitted at that port.

The proposed rule requires that the shipping container of food as well as any documents (such as invoice, packing list, bill of lading, and airway bill) accompanying the food be labeled. By "shipping container," FDA does not mean the 20' or 40' intermodal sea container or rail car. FDA is referring to the individual containers designed for shipping the food, such as cartons. FDA gives an example of a cardboard carton holding 24 cans of food. If refused, the cardboard carton would need to be labeled, but not the individual 24 cans. Another example is vegetable oil shipped in 5 gallon drums. The individual drum is the shipping container and would need to be labeled.

The label must be permanent, clear and conspicuous. Depending on the situation, the labels may need to be affixed under FDA supervision, for example where the refused food presents a public health hazard. Or FDA may require submission of photographs as evidence of labeling. Or the labels may need to be affixed under State or Federal supervision.

FDA's proposed rule states the food cannot be moved until the owner or consignee has complied with the labeling requirements. That is, the food cannot leave the port of entry, or if the food has already been moved from the port of entry to another location for storage, before the food leaves that storage area to be re-exported.

All expenses in connection with affixing the label are to be borne by the owner or consignee of the food.

The Proposed Rule is available at the following link. Comments must be submitted by December 2, 2008.

<http://edocket.access.gpo.gov/2008/pdf/E8-21813.pdf>

BIS Issues Guidance on Export Diversion of Items to Iran

The Bureau of Industry and Security (BIS) under the Department of Commerce issued a press release on September 24, 2008 announcing that it has issued guidance on actions that exporters can take to prevent the illicit diversion of items to support Iran's nuclear weapons or ballistic missile programs. This guidance is in response to recent enforcement actions against companies that have been identified by BIS as involved in a global procurement network which sought to illegally acquire U.S.-origin dual-use and military components for the Iranian Government.

Commerce Under Secretary Mario Mancuso stated, "The United States maintains an embargo against Iran, and companies must remain vigilant that exports are not diverted to Iran through other countries." All exports to Iran are subject to the Export Administration Regulations and the Department of the Treasury's Iranian Transactions Regulations. Exporters should seek authorization from Treasury's Office of Foreign Assets Control (OFAC) prior to exporting to Iran.

BIS controls exports and re-exports of dual-use commodities, technology and software for reasons of national security, missile technology, nuclear non-proliferation, chemical and biological non-proliferation, crime control, regional stability and anti-terrorism. Criminal and administrative sanctions can be imposed for violations of the Export Administration Regulations.

The Iran Web Guidance can be viewed on the BIS website at: <http://www.bis.doc.gov/complianceandenforcement/iranguidance.htm>

BIS publishes Final Rule on Additions of Certain Persons to the Entity List and Removal of General Order

Effective September 22, 2008, a final rule from the Bureau of Industry and Security amends the Export Administration Regulations (EAR) by adding additional persons to the Entity List (Supplement No. 4 to Part 744) based on section 744.11 of the EAR. These additional persons being added to the Entity List have been determined by the U.S. government to be acting contrary to the national security or foreign policy interests of the United States.

U.S. exporters have several lists to check before they can be sure that there is not a restriction to the party receiving their merchandise. Among these lists, BIS listed several names under General Order No. 3 in the Export Administration Regulations. This seemed to be an odd place since there are many lists and most of these lists are checked electronically. Part 744 of the Export Administration Regulations is updated to reflect the change.

These names added to the Entity list, as well as the names found on the link to the lists provided below must be checked for all export transactions for any relevant information. Remember, all the names under General Order No. 3 now appear on the Entity List link.

<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

100% Scanning Could Actually Diminish Security

In our July issue of “Shap Talk,” we gave an update on the SAFE Port Act’s Secure Freight Initiative that calls for 100% scanning of all inbound containers by July 1, 2012. The Department of Homeland Security (DHS) has been opposed to 100% scanning and has cited multiple challenges to the program such as cost, port congestion, and technology. One Customs official has said that, “it is important also to recognize that 100 percent scanning DOES NOT equal 100 percent security.” Even DHS Secretary Michael Chertoff has said that 100% scanning would be “the end of our ports.”

Now the Government Accountability Office (GAO) has issued a report that says 100% scanning could actually have an adverse effect on international security standards. Not all ports, particularly those in developing countries, have the resources to implement scanning for U.S.-bound containers. Scanning each and every container runs counter to risk management principles and would reduce the focus on high-risk containers. Moreover, a number of countries have said they will require full reciprocity with 100% scanning of containers from the United States to their countries, and yet we cannot fulfill this while requiring the same from our trading partners.

The GAO report is available at: <http://www.gao.gov/new.items/d08538.pdf>

How Secure is Your Cargo Against Theft?

U.S. Customs & Border Protection's (CBP) priority mission is to prevent terrorists and terrorist weapons from entering the United States, while also facilitating the flow of legitimate trade and travel. However, cargo theft, even while shipments are moving in-bond, remains a pervasive problem. Insurance companies estimate cargo theft at \$25-\$50 billion annually. The most commonly stolen item? Shipments of cell phones which amounted to \$7.5 million in losses in 2007.

Most theft involves collusion among the truck drivers or those with access to the cargo or cargo details. Drivers will be paid to leave the truck unattended at a designated location and time. Cargo theft most commonly takes place in the Los Angeles, Miami, and New York/New Jersey areas. Most warehouse thefts take place in California and Texas where gangs have organized cargo theft rings. The highest incidence of cargo theft is from trucks (87%), followed by ocean (8%), rail (4%), and air (1%).

Cargo thieves act rapidly to rid themselves of stolen goods. The FBI estimates that within 24 hours, the thieves no longer have the goods which have already been delivered to their targeted destination. Within 48 hours, the cargo has been split into approximately 5 consignments and distributed. Within 72 hours, the goods are being marketed and sold. Internet sites such as craigslist and e-bay hasten the distribution of these goods.

Customs continues to explore a viable tamper-proof container security device to complement the multiple container security programs such as C-TPAT and CSI. As reported in our April "Shap Talk," Customs is in the process of revamping the in-bond program to improve the security of in-bond shipments. CBP is currently testing radio frequency transponder technology combined with digital imaging for in-bond shipments between Los Angeles/Long Beach and Laredo.

What can you do? Insuring your shipments is a given. The carrier's limitation of liability will not offer you the protection you need. Know how long the trip from factory to port and from port to final destination is supposed to take. Use only reputable trucking companies that maintain regular contact with drivers. And remember that all maritime containers arriving by vessel at a port of entry in the United States on or after October 15, 2008, are required to be sealed with a seal meeting the ISO/PAS 17712 standard.

For more information, please contact us at insurance@shapiro.com.

TRANSPORTATION UPDATE

October 2008 Update

Samuel Shapiro & Company, Inc. now has a Global LCL program for both imports and exports to offer our customers competitive pricing and provide us with the technology that will support us and our customers. We can quote almost immediately and also have access from our website to sailing schedules.

Due to rising fuel costs most carriers are increasing their BAF to and from the U.S. on a monthly basis.

DOMESTIC

The Port of Los Angeles has announced that it will delay collection of the \$35 per-TEU Clean Truck fee, originally scheduled to commence October 1, 2008, to give programmers more time to set up the computer system for the collection of the fees. The Port of Long Beach also announced it was pushing back by two to three weeks the October 1, 2008 start date for fee collection, also to give computer programmers more time to finish their work. However, the October 1st start date remains in place for other components of the Clean Trucks programs, including a ban on all pre-1989 trucks and a requirement that motor carriers secure port-issued concession agreements. Until the computer programming is developed, the ports intend to issue stickers for all trucks that have been cleared to operate in the harbor. The concession agreements cover the rules that trucking companies must follow if they wish to do business with the ports. As of September 23rd, nearly 500 companies had applied for concessions, representing more than 6,000 trucks.

Security improvements, another major component of the program, will also begin October 1st. All truck drivers are required to have a Transportation Worker Identification Credential (TWIC) as part of their concession agreements or show evidence that they have applied for the TWIC.

Meanwhile, the Port is developing a computerized PortCheck system -- similar to the existing PierPass system -- that will enable the collection of Clean Truck fees from cargo owners. The fees will help finance leases and loans to assist truckers in obtaining clean trucks. The Port will begin collecting the fee as soon as the computer system is operational, which is expected to be a few weeks after October 1st. Cargo owners are encouraged to register with PortCheck or PierPass immediately in order to claim their cargo when the ports begin assessing the fee.

More information can be found on the following sites:

<http://www.polb.com/news/displaynews.asp?NewsID=451&targetid=1>

<http://www.polb.com/news/displaynews.asp?NewsID=452&targetid=1>

http://www.portoflosangeles.org/newsroom/2008_releases/news_092408ctp9thcir.pdf

FAR EAST

Expect BAF increases monthly now with the fluctuating BAF in most steamship line contracts.

Many carriers have suspended their Peak Season Surcharges (PSS). We have negotiated suspended PSS with many carriers as well.

MEDITERRANEAN

Samuel Shapiro & Company, Inc. has direct service for LCL cargo from Italy to Baltimore without the congestion of New York. Service moves on the MSC service with very competitive rates.

MSC has announced the new BUC (bunker usage charge) level effective October 15, 2008 will be \$247.00/TEU to the U.S. east coast and Gulf, and \$389.00/TEU to the U.S. west coast from Italy, Spain, Portugal, Southern France, Slovenia, Croatia, Albania Israel and Turkey.

SOUTH AMERICA

Brazil Situation -Brazil has become increasingly strained and we are currently experiencing many issues that are affecting all customers out of Brazil. In an attempt to answer some of your questions we have compiled some information to help better understand the situation in Brazil and why shipments are taking longer than usual to sail. In the last 3-4 months K-Line, Yang Ming, Mitsui and Hanjin have all pulled their vessel strings from the South America-U.S. East Coast trade. Maersk has also recently pulled out of this region. Needless to say, this has a significant impact on the supply of vessel capacity, increasing demand and subsequently price. Currently, the U.S. East coast is only being serviced by CSAV/Libra and MSC vessels. The other carriers still "offer" the service, but what they are doing is chartering space on MSC and CSAV/Libra vessels. Space can be very limited with the chartered slots. Many times we are getting better rates with the other carriers, but then run into situations where the space is not available. Another recent change with Brazilian customs that has affected our bookings is the institution of a new rule that states that booking information must be submitted almost a week before sailing. Therefore, if you have to change a booking from one carrier to another, the sailing may be pushed back. As a result, rates are changing almost monthly and we will be updating you accordingly.

NORTHERN EUROPE

BAF levels seem to be staying the same for October.

EXPORT

Freight forwarders in the U.S. are currently experiencing significant delays in getting space on board vessels. We have seen this developing in the market since the New Year. In other words, when you call us to make a booking and we contact the steamship line, typically the first available vessel we can book is not for two to three weeks. Gone for now are the days when you can call and expect to make a sailing in the same or next week.

To be clear about this challenge, the reasons for it unequivocally lie with the steamship lines. In general terms, they have reconciled their vessel strings to increase capacity in the Asia to Europe trade lane, subsequently reducing capacity in their other routings. Meanwhile U.S. exports have picked up due to the weakening dollar, which also puts downward pressure on capacity. In combination, there is more demand for space, rates are increasing, and the leverage once again lies with the steamship lines as they choose not to satisfy this burgeoning volume.

In discussion with other freight forwarders, two to four weeks appears to be standard for getting on board a vessel. If you are booking through us, we recommend the following. First and foremost, please give us as far advance notice as possible to make the booking. There is no charge from the steamship line to cancel a booking so long as the equipment is not pulled out. If you can notify us when the order goes into production, we will make the booking that far out. Should it be necessary to cancel, we can do so.

Secondly, the steamship lines typically allow a certain number of container slots per port. If you are willing to consider higher pre-carriage costs in order to make an earlier sailing, then we can try to book out of a port further away. For example, if you normally sail out of Baltimore, you may want to consider New York or Norfolk as alternatives. We can look at alternative ports as well as alternative carriers.

As with any challenge in international logistics, clear open communication is key to success. We ask that you please bear with us through these challenges and know that we will do everything in our power to get you on the earliest vessel possible. There is no foreseeable end to the current environment, so this is a business reality that we will have to work through together.

Please be advised that for export cargo all carriers are imposing BAF increases almost monthly. Rates will be re-quoted at the time of booking due to the constant changing of rates.

SAMUEL SHAPIRO & COMPANY, INC. – THE LATEST

Philadelphia 45' Project Moves a (Big) Step Closer to Completion

On June 23, 2008, the U.S. Army Corps of Engineers (COE) and the Philadelphia Regional Port Authority (PRPA) executed the Project Partnership Agreement that will deepen the Delaware River channel from 40 to 45 feet. The agreement was signed at the Packer Avenue Marine Terminal by the Honorable John Paul Woodley, Jr., the Assistant Secretary of the Army for Civil Works, and PRPA Chairman John H. Estey. This was the next step into letting the process move forward on this \$349 million project that will extend 102 miles from Camden's Beckett Street terminal to the breakwater at the mouth of the Delaware Bay. Governor Ed Rendell called this project "the most important project in the history of the port...[that will [help] keep and create thousands of good-paying family sustaining jobs." Rendell says the PRPA is committed to developing a new Greenfield Marine container terminal on the Delaware River south of the Walt Whitman Bridge. Also at the press conference was U.S. Senator Arlen Specter (R-PA), Congressmen Bob Brady (D-PA) and Chaka Fattah (D-PA), State Representative Bill Keller (D-PA), U.S. Corps of Engineer Brigadier General Todd T. Semonite, Commander of the North Atlantic Division, and Lt. Col. Gwen E. Baker, former Commander of the COE Philadelphia District.

The initial legislation was put into place in 1991 by Senator Specter. The goal is to complete this project in a timely manner in order to stay competitive on the East Coast. The Delaware River is too shallow at 40 feet to allow many of the world's larger container vessels to dock, however at 45 feet it would allow us to compete with the other East Coast ports. International shipping lines and other global maritime interests have noticed our commitment and progress to make this happen as there will be opportunity for them to do business with the Philadelphia port. This will also spur the interest of private investors to expand and build terminal facilities along the river that handle container and break bulk cargos. The COE has no doubt that this will enhance our position as a world class port and that it will be done in an environmentally responsible manner.

Are You Ready for All the Coming Changes in Your Import Program?

Did you know the 10+2 rule is expected to be out within days or weeks? Do you know what it means to you and your business? 10+2 will affect *every* importer and represents a vast change in how and when information is provided to U.S. Customs for each shipment. In addition, the recently enacted Farm Bill imposes new declaration requirements on importers including First Sale, Softwood Lumber, and the wide-ranging Plant Product Declaration (see lead article above).

You won't want to miss our presentation on what 10+2 and the Farm Bill means to you.

Our Import Compliance seminars will be presented and hosted by Jane Taeger, our Director of Compliance. Choose from classes in Atlanta on October 14th and New Jersey on November 6th.

Import Compliance and 10+2 classes (last two classes for 2008):

Atlanta, GA	Marriott Atlanta Airport	10/14/08
Fort Lee, NJ	Doubletree Fort Lee	11/6/08

Time:

8:30-9:00: Breakfast and registration

9:00-12:00: Seminar

Cost (includes seminar materials, continental breakfast, and refreshments):

\$85.00 per person

\$75.00 additional attendees from the same company

Click on the link below to register today!

<http://www.shapiro.com/html/2008SeminarSchedule.html>

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 Matthew Kobussen, Philadelphia Import Manager, for his 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.