"SHAP" TALK

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TRADE NEWS

Miscellaneous Trade Bill in Effect August 26, 2010

The U.S. Manufacturing Enhancement Act of 2010 (H.R. 4380), also known as the Miscellaneous Trade Bill (MTB), was signed into law on August 11, 2010. The changes in HTS chapter 9902 became effective August 26, 2010.

The MTB consists of two parts. The first part (Title I of the MTB) contains new duty free and duty reduction provisions. The second part (Titles II and III) extends through December 31, 2012 hundreds of duty suspensions and reductions that had previously expired December 31, 2009. Goods listed in Titles II and III of the MTB have been accorded retroactive benefits to January 1, 2010. Importers may request refunds on goods in these sections that were entered or withdrawn from warehouse for consumption between 1/1/2010 and 8/25/2010. Requests for liquidation or reliquidation for goods in Titles II and III must be requested with Customs within 180 days of the date of enactment (August 26, 2010).

The Manufacturing Enhancement Act of 2010, and applicable tariff numbers listed in Titles I, II, and III can be found at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4380rds.txt.pdf

APHIS Proposed Rule on Definitions under the Lacey Act

On August 4, 2010, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) published a proposed rule which provides for definitions of exempt and regulated articles under the Lacey Act.

Specifically the trade has sought information on plants and plant products that would be exempt from the provisions. The Lacey Act names three categories of plants that are exempt. They include:

- Common cultivars, except trees, and common food crops (including roots, seeds, parts or products thereof).
- Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts or products thereof) that are used only for laboratory or field research. (The Lacey Act requirements still apply if the item is included under an endangered species action.)
- Plants that are to remain planted or to be planted or replanted. (The Lacey Act Requirements still apply if the item is under an endangered species action.)

The proposed rule contains language that provides for definitions of the terms “common cultivars” and “common food groups” as follows:

- A common cultivar is a plant, except a tree, that has been developed through selective breeding or other means for specific morphological or physiological characteristics; and is a species or hybrid that is cultivated on a commercial scale; and is not listed as an endangered or threatened species under a national or international action, etc.

- A common food group is a plant that has been raised, grown or cultivated for human or animal consumption, and is a species or hybrid that is cultivated on a commercial scale; and is not listed as an endangered or threatened species, etc.

In addition APHIS plans to add a definition for the term plant to include any wild member of the plant kingdom including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands.

They also plan to supplement the definitions with examples that qualify for exemption. The listing of examples will be maintained on the APHIS website, and there will be an email address for the trade to send inquiries about the exemption of specific commodities, and to make requests to have certain plants and/or products added to the list. Only products that fit the definitions will be considered for addition after the listing is created. To date the planned listing of examples is still under development, but is expected to be published after the final rule details are established. It is expected that the listing will include such common plant products as cotton, tomatoes, peppers, soybeans, among many other common products.

Comments on the proposed rule are being accepted through October 4, 2010, and may be submitted by visiting the federal portal at www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0018.

In a September 2, 2009 Federal Register notice, USDA asked for comments on certain HTS headings under consideration for subsequent phases that would be scheduled to begin on or after September 1, 2010. As of August 4, 2010, there were no further plans by USDA for additional phases to be implemented to include more HTS headings. USDA intends to provide at least 6 months' notice to the phase-in schedule to facilitate compliance with the new requirements. Changes will be announced in the Federal Register.

Update on Festive Articles

U.S. Customs and Border Protection has sent a request to the International Trade Commission to initiate an investigation regarding an update to Chapter 98 in the Harmonized Tariff Schedule to include a new provision for festive articles with utilitarian use.

Chapter note 1(v) was added to HTS Chapter 95 in 2007 that states that "tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function" are excluded from classification in Chapter 95 and are to be classified according to their constituent material.

The new Chapter 98 duty free provision for festive articles with utilitarian use would cover tableware, kitchenware (except baking pans, cookie cutters, cookie stamps and presses) and toilet articles of chapters 39, 69 or 70; carpets and other textile floor coverings of chapter 57; apparel and accessories of chapter 61 or 62; and made-up textile articles of chapter 63, provided they are closely associated with a festive occasion, such as Christmas, Halloween, Easter, etc., and that the articles are used or displayed principally during that festive occasion and not typically at any other time.

The existing provision under 9817.95.01 would be revised. 9817.95.05 would be removed and replaced by 9817.95.02.

The new provisions would read:

9817.95.01 Utilitarian articles (including but not limited to Seder plates, blessing cups, menorahs or kinaras) of a kind used in the home in the performance of specific religious or cultural ritual celebrations for religious or cultural holidays, or religious festive occasions (provided for in subheading 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40 or 9405.50).

9817.95.02 Utilitarian articles, each incorporating a symbol and/or motif that is closely associated with a festive occasion (for example, Christmas, Easter, Halloween, or Thanksgiving), if the foregoing articles are used or displayed principally during that festive occasion and not typically at any other time, under the terms of U.S. Note 9 to this subchapter.

European Union Advance Cargo Security Program

The European Union will begin its version of 10+2 effective January 1, 2011. The carrier will be responsible to file with Customs in the relevant EU country an entry summary declaration (ENS) no later than 24 hours before vessel loading in the foreign port. For airfreight with flights over 4 hours duration, the ENS is due no later than 4 hours prior to arrival at the first airport in the EU.

The ENS is required for all shipments, including FROB (freight remaining on board), arriving in the EU, irrespective of the final destination. If the ENS is not filed, goods may not be loaded on the vessel. The risk assessment results could also result in a “Do Not Load” message.

The data elements required for the ENS are:

- Shipper name and address
- Consignee name and address
- Notify party name and address (required with a “To Order” bill of lading)
- HTS heading (4 digits), but 6 digit subheading is preferred
- Number of packages
- Shipping marks for non-containerized cargo

- Container number
- Seal number
- Gross weight in kilograms
- UN code for hazardous codes
- Method of payment for freight charges (e.g., check, credit card, wire, cash, etc.)

Precise cargo descriptions will be necessary in order to fulfill the EU security program requirements.

COMPLIANCE CORNER

Customs Cracking Down on Duty Free Claims

U.S. Customs and Border Protection (CBP) has been stepping up efforts to verify duty free claims made under various trade preference programs such as GSP, AGOA, Israel, Bahrain, etc. This also includes duty free claims made for U.S. goods returned. Customs will typically send the importer a CBP Form 28, Request for Information, and ask for proof of origin. Should the importer fail to respond to the request, or should Customs deem the submitted information insufficient to substantiate the origin, CBP will follow up with a CBP Form 29, Notice of Action. The Notice of Action will usually give the importer another 20 days to submit additional information. If Customs still feels the information does not prove origin, the claim for preferential treatment will be denied and the importer will receive a bill for duties upon liquidation of the entry.

Why the crackdown? Last year's economic crisis led to a 15% decrease in revenue collected by CBP. Only 29% of imported goods are dutiable. The remaining goods are either unconditionally duty free or are accorded duty free status under tariff preference programs. Customs wants to be sure it collects every dime owed to them and narrow its revenue gap to under one percent. Free trade agreements, particularly for textile entries, are the low hanging fruit for Customs which has listed Revenue Collection as one of its Priority Trade Issues.

U.S. goods returned should be supported by three pieces of information:
1. Manufacturer's Affidavit
2. A foreign shipper's declaration that the goods are of U.S. origin and have not been advanced in value or improved in condition while abroad
3. The importer's declaration that the goods are of U.S. origin and were exported without benefit of drawback.

The specific language for these declarations can be found in the Customs Regulations, 19 CFR 10.1.

GSP claims can be trickier to substantiate. To be eligible for GSP, the goods must be imported directly from the beneficiary developing country (BDC) and the imported article must be wholly the growth, product, or manufacture of that country. The 35% rule may be used in which duty free entry under GSP may be accorded only if the sum of the cost or value of the materials produced in the BDC plus the direct costs of processing operations performed in the BDC is not less than 35% of the appraised value of the merchandise.

We still see Form A's for GSP claims. Customs no longer requires the Form A with entry (and has not since 1994!), nor will they accept the Form A to prove origin. Instead, Customs wants to see evidence of origin such as raw materials purchases, proof of factory labor, product specifications, bill of materials, product cost sheets, payment records, overhead allocation schedules, and support for manufacturing overhead. Production records must establish the value of BDC materials used in the imported article by lot, batch or shipment. And finally, evidence of direct shipment will be a through bill of lading or air waybill showing the U.S. as the final destination.

If you receive a Request for Information, you must to act quickly to gather the requested documentation. If necessary, an extension may be granted by the CBP official who issued the Form 28. It is important to request the extension prior to the 30 day expiration date, and to give Customs an estimate of when a response can be expected.

TRANSPORTATION UPDATE

September 2010 Update

INDUSTRY NEWS:

Chassis controversy heats up

In an effort for the container lines to overhaul their operations in order to maintain profitability, they have decided to focus on their core operation of container shipping and shed secondary services and operations that have added costs without helping to offset revenue. As a result, carriers are one by one pulling out of the business of providing chassis for pulling or picking up their containers. In recent weeks, Cosco, CMA, NYK, OOCL, ACL, and Evergreen have announced that they are exiting the chassis business. This withdrawal is beginning in smaller ports and inland locations such as Boston, Philadelphia, and Pittsburgh, and will eventually extend throughout the U.S.

It appears that the carriers have followed the lead of Maersk Lines, who announced in 2009 that they would no longer provide chassis free of charge in the New York-New Jersey ports. Maersk established a new company to provide chassis on a neutral basis at a cost that started at $11 per day to any trucker that would need one.

Trucking companies are especially concerned because they are keenly aware that they will have to provide the chassis at all U.S. ports and rail terminals either by owning the equipment themselves or by leasing them on a per-diem basis from third-party providers. They point out that a typical chassis spends the majority of time at a customer's warehouse while the container is being unloaded or in transit, so they estimate that a motor carrier with 100 trucks will need as many as 300 to 400 chassis so the equipment will always be available in sufficient quantities in order to serve its customers. The vast majority of the truckers that work the steamship terminals do not have the money to buy, maintain, and store chassis which is why this long ignored piece of the puzzle is coming to the forefront now. Truckers will never pay for the chassis so this cost will be passed on to the customers.

For many years the carriers have claimed that they absorbed most of the costs involved in providing and maintaining a fleet of chassis. Terminal operations such as the Ports of Los Angeles and Long Beach are hoping that they can also get out of the business of providing the land for keeping chassis at the port because they feel the land can be used for stacking containers rather than for chassis. Truckers in the LA area are especially skeptical how this transition will take place and they project a logistical nightmare in their port area. The third-party equipment providers are of course much more enthusiastic as they stand to make quite a bit more money leasing their chassis out to truckers that cannot afford to purchase their own.

NYK announced it would stop providing chassis in Oakland, CA as of September 1st but they have decided to postpone that action. They claim that this postponement is due to the lack of adequate data links to be sure that the customer's requirements will be met in Oakland port. This data link is needed to make sure who would be responsible for the costs involved for use of the chassis.

China's economic expansion slows down
One of the economic indicators to measure the expansion of the Chinese economy is to measure the growth of its import market. China's imports slowed in July as compared to June and its growth percentage dropped 12.6 percent. China's economic growth slowed from 11.9 percent in the first quarter to 10.3 percent in the second quarter. Weakness in China's demand for imports could affect other economies, including producers of raw materials that have benefitted with China's explosive industrial growth. Chinese officials have been working to cool the country's rising real estate market but thus far this doesn't seem to be working.

OCEAN FREIGHT:

Maersk reports healthy profits in 2010
The world's largest steamship line, A.P. Moller-Maersk is now projecting a $4 billion profit in 2010 as container business recovers this year. Maersk reports that container shipping is expected to post a positive result in the second half of 2010, but with uncertainty in the fourth quarter as the market is expected to weaken when they remove the Peak Season Surcharge. Maersk and its sister company Safmarine had enjoyed an increase in container traffic of 11 percent over last year in the first quarter, followed by slower growth of 5 percent in the second quarter. Maersk also trimmed its payroll by 1,150 people in the first half of 2010 which increased profits by $500 million through 2010.

Ship collision closes Nhava Sheva and Mumbai shipping lanes

India's busiest container port, Jawaharlal Nehru Port at Mumbai experienced a major collision between two vessels on August 7th that left hundreds of containers floating in the sea and many sunken to the bottom of this very important shipping channel. During much of August, all shipping to and from the Mumbai port area has been halted and carriers had no choice but to divert cargo to an alternate port of Mundra in Gujarat. As of August 23rd, the port area was still experiencing a complete slow down of cargo and only certain vessels with limited draft were allowed to use the channel during the daylight hours. The channel may take another 30 days to be cleared and workers still have been unable to retrieve all of the containers that were submerged in the channel due to unfavorable weather conditions.

What's up with Peak Season?

Business trends in 2010 have resulted in a very early peak season as many importers decided to take delivery of their product to avoid the holiday buying season rush as their inventories were depleted from last year's low economic activity. It appears that this year may see a partial leveling of the traditional late summer-early fall spike in imports for the holiday season. This development could see far reaching effects in port and intermodal rail and truck activities. Some economists are expecting the traditional peak season to go away this year as consumer confidence and spending have sputtered as a result of persistently high unemployment or underemployment coupled with tight credit, weak housing sales, and a slowing growth in global manufacturing.

Container volumes are not expecting to slump as they did in 2009 when containerized imports from Asia plummeted 15.1 percent, however there seems to be a softening in the market as we head into fall which could mean lower shipping rates to come.

MSC enhances North Europe to NY service

MSC has announced some changes in its current North Atlantic – USA service. MSC has decided to make New York the first port of call for its revised vessel rotation which will now allow for a transit time from Le Havre to New York to be only 7 days; 9 days from Antwerp; 11 days from Felixstowe, and 13 days from Bremerhaven.

APL announces GRI to and from US./Europe

APL's general rate increase (GRI) will be $400/20', $600/40', $600/40'HC both to and from Europe/USA effective October 1, 2010.

MSC announces GRI from West Mediterranean to USA ports

Effective October 15, 2010, Mediterranean Shipping Company announced a GRI in the amount of $200 per container from Italy, Spain, Portugal, Israel, and Southern France ports to all USA ports.

MSC cancels previously announced Peak Season Surcharge increase from India Subcontinent to USA ports

As a result of a softening market, MSC has announced that it has cancelled its plans for a September 1, 2010 PSS increase. The current PSS of $300/20', $350/40', and $375/40'HC will remain in effect.

AIRFREIGHT:

United Airlines halts the use of shipper built skids
United Airlines has stopped accepting shipper built skids as cargo now must be pre-screened. Shippers that do not want their cargo broken down for pre-screening will have no other option but to use a freighter service for now.

Lufthansa to increase airfreight pricing in winter 2010/2011
Lufthansa is planning rate increases this winter after suffering huge losses in the crisis of 2009. The ever-increasing security costs have risen by over 1000% in the past 10 years. As a result, Lufthansa's Security Surcharge will increase from 0.17 EUR per kilo to 0.20 EUR per kilo. The rise in actual airfreight rates has not been announced yet.

TRUCKING:

Diesel prices going up
August saw the largest increases in diesel fuel prices since April. The average price of diesel fuel jumped to $2.991 per gallon. The price hike was the highest in the Midwest and on the East Coast.

Mexico adjusting tariffs in ongoing border trucking dispute
Mexican officials announced that they may impose tariffs ranging from 5% to 15% on products such as cheese, fruits, juices, wine, and toilet paper due to an unresolved dispute with the U.S. not allowing Mexican trucks to access U.S. roads. Under NAFTA, Mexican trucks are required to have access to U.S. roads, but during the past year the Obama administration has put a halt to that access, leading to the dispute between the two countries. The head of the Teamsters Union told National Public Radio in a recent interview that letting Mexican trucks on U.S. highways "that do not meet our standards is to endanger the American driving public. That's why we're against it."

SAMUEL SHAPIRO & COMPANY, INC. NEWS

Shapiro Celebrates 95 Years of Service

Michael Lovejoy, Baltimore Port Director, Customs and Border Protection, presents Sig Shapiro with the U.S. Customs Ensign Award.

Samuel Shapiro & Company, Inc. was founded in 1915 by Samuel Shapiro who, at the age of twenty had three years of experience working for a customs broker. He opened an office with a "five dollar roll top desk," as he used to say, and "the rest was profit." On August 11th, Samuel's son, M. Sigmund Shapiro, and Margie Shapiro, Sig's daughter and President/CEO, celebrated the company's 95th year in business, with over 150 of its customers, employees, local officials, family, and friends.

Speakers included Mary Jane Norris, Maryland Port Authority; Michael Lovejoy, Baltimore Port Director, U.S. Customs and Border Protection; Rick Lidinsky, Federal Maritime Commission Chairman; Marianne Rowden, President and CEO of the American Association of Exporters and Importers; among others. During the event, Michael Lovejoy awarded Shapiro the prestigious U.S. Customs Ensign Award while Mary Jane Norris presented "Sig," as he is known by his friends and colleagues, with the Commemorative Ship's Wheel. "It was such a pleasure to be part of this wonderful event and celebration of 95 years of dedicated service," noted Norris. "During the good economic times, and the not so good times, there are constants: the family, dedication to the companies they represent, and a strong commitment to the Port of Baltimore. We look forward to the next 95 years and the company's continued success."

Margie, the youngest of Sig's children, became the third generation to run the family business. At the tender age of 12, Margie recalls helping her father numerically sequence checks at the dining room table. Today, her goal remains to continue the legacy of old-fashioned customer service that began so many decades ago. "We are still grounded by the company's roots and the $5 roll-top desk of which my grandfather was so proud," noted Margie. "We still honor its essence, its soul, and its philosophy: to serve as an extension of each of our customer's businesses, providing compliant, stellar, and proactive service. This will never change."

Many customers and employees have remained loyal to the company for decades. James Speitel, President of Peerless Hardware of Columbia, PA, has been doing business with Samuel Shapiro & Company, Inc. for over 17 years. "Samuel Shapiro has guided and protected our company through the years with their vast knowledge of the industry and their never ending patience," noted Speitel. "Samuel Shapiro has enabled our company to experience growth by introducing solutions and handling the details. Being a small company, we rely heavily on Samuel Shapiro to keep us not only informed but handle the necessary work to keep our shipments moving on time."

Today, looking back at the company's growth and development, Sig can't help but to be proud of what has been accomplished. "The company has grown in a steady and orderly way, with new clients and expanded business from the old ones," he noted. "Our horizons and markets have broadened appreciably and will continue to do so. Much of this is due to Margie whose love of the action permeates everything we do."

Margie, who has been President and CEO since 2002, shares the same proud sentiment as her father. But both also share undeniable humility and gratitude for the support of their employees, vendors, and customers. "Nothing makes me prouder than to represent the third generation of this Baltimore-based family business," she noted. "My grandfather, and my father after him, committed their hearts and their lives to this company, its employees and the city of Baltimore."

When asked to reminisce on the company's history and its 95 years of service, Sig tries to think of what hasn't been said before. "I think of my dad, Sam, and his five-dollar-roll-top desk that started it all in 1915," he noted. "To have three generations prevail in business is quite thrilling."

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 Natalia Gorbunova, Pricing Specialist, 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.