Shap Talk

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In this issue:

WE WANT TO HEAR FROM YOU!

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TRADE NEWS:

Declaring U.S. and Foreign Goods Returned

American manufacturers, importers, and other entities are often encouraged to take advantage of U.S. Customs and Border Protection's (CBP) 'U.S. Goods Returned' program. Provision 9801.00.10 in the Harmonized Tariff Schedule (HTS) allows domestic and foreign products to return to the U.S. without being subject to duty and merchandise processing fees. However, the provision does stipulate that the goods cannot be physically changed in any way that improves them or makes them into a different product.

Sounds easy, right? Well, that's not necessarily true! For the goods to qualify for duty free entry, CBP requires a long list of proof that no efforts were made to undergo such transformation. Without the proper documentation, importers are left exposed to potential penalties, fines and/or CBP audits.

In order to receive the benefits of a 9801 'U.S. and Foreign Goods Return' duty claim, a U.S. importer must provide the following documents:

- A manufacturer's affidavit stating goods were made in the U.S. As the name implies, this is a form completed by the actual manufacturer of the goods. CBP requires this for any shipments that are valued over $2000. If the shipment contains 10 different articles made by 10 different manufacturers, the importer may have to provide 10 different manufacturers' affidavits.
- A declaration from the foreign shipper stating that the good was not improved or repaired abroad.
- Some form of proof to demonstrate that the goods have been returned within 3 years from export. Accepted documents include but are not limited to: export invoices, export bill of ladings and Electronic Export Information filings (EEI).

It is also considered best practice for importers to establish control points in their compliance policy regarding 9801 claims which indicate:

- Operating procedures with the import broker to ensure that notification and acknowledgement are given by the importer at the time of entry.
- Employees responsible for communicating import instructions are trained on the applicable corporate 9801 controls and Customs regulations.
- Recordkeeping requirements are put into place to ensure that all documents required to be kept for 9801 claims are properly maintained.

Need assistance developing processes and procedures for returning goods? Contact our compliance experts at compliance@shapiro.com.

CTPAT Suspending Applicant Submissions

The Customs Trade Partnership Against Terrorism (CTPAT) will be suspending applicant submissions from January 1, 2020 through June 1, 2020 in order to update the Eligibility Requirements and Security Profile with the new Minimum Security Criteria (MSC).

As noted in our July 2019 ShapTalk article, U.S. Customs and Border Protection (CBP) recently revised the CTPAT security criteria after 17 years, and now must update the portal to adhere to the new requirements.

As a refresher, CTPAT Membership is open to 12 different business entities in the supply chain:

- U.S. Importers
- U.S. Exporters
- U.S. Customs Brokers
- U.S. Highway Carriers (Canada and Mexico)
- Mexican Long-Haul Highway Carriers
- Air Carriers
- Consolidators
- Third Party Logistics Providers
- Rail Carriers
- Sea Carriers
- Foreign Manufacturers
- U.S. Marine Port Authority & Terminal Operators

Anyone interested in submitting a CTPAT application is asked to check back with CBP officials after June 1, 2020.

Please note: It does take some time to get everything ready to apply. Despite the temporary hiatus, Shapiro highly recommends that you do not stop working on your CTPAT process.

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

Recordkeeping, Reasonable Care and Knowing Your Supply Chain

Over the past year, importers have faced many challenges that have disrupted supply chains, cut into profits and injected constant fear about what the future may bring. The financial setbacks that importers have suffered as a result of these issues were largely uncontrollable. However, it is possible to properly manage your import compliance process to avoid penalties and lessen fear!

Proper recordkeeping and exercising reasonable care can help lower your financial risk

In terms of financial penalties that carry the greatest risk for importers, recordkeeping tops the list. However, with proper procedures in place, it can also be the easiest violation and penalty to avoid.

Due to the current trade environment, government agencies such as U.S. Customs and Border Protection (CBP) are increasing scrutiny and enforcement in all areas and ensuring the accuracy of information with post entry reviews and audits. If CBP initiates an inquiry, compliance assessment, audit or investigation, they may examine any entry or records they deem relevant.

Importers are required to keep records for 5 years and must be able to produce them within 30 days of receiving an inquiry from CBP. Failure to do so carries the risk of severe consequences and fines.

Don't Snooze on the Basics - Penalties are not the wakeup call you requested

Every importer should take the time to review their internal procedures to make sure their company's reasonable care and compliance standards are up to date.

Here are a few questions to help you get started as an importer:

- Have you established a reliable procedure/program that ensures you know exactly what was ordered, where it was made, how it was made and what it is made of?
- Has a responsible and knowledgeable individual within your organization reviewed the Customs documentation prepared by you or your expert to ensure that it is full, complete and accurate? If that documentation was prepared outside your own organization, do you have a reliable system in place to ensure that you receive copies of the information as submitted to CBP; that it's reviewed for accuracy; and that CBP is apprised of any needed corrections in a timely manner?
- If you use an expert to assist you in complying with Customs requirements, have you discussed your imports in advance with that person and have you provided that person with full, complete and accurate information about the transactions? Furthermore, do you follow the advice received from your expert and keep a written record of the communications?
- Do you have a compliance program and procedures in place to ensure that your Customs entries are submitted correctly? Are they accessible to all employees who are involved in the importation process?
- Have you developed a reliable program or procedure to maintain and produce any required Customs entry documentation and supporting information?

If you're worried that your recordkeeping procedures are behind in the times, don't be alarmed! Shapiro's compliance gurus are happy to answer any questions or concerns you may have.

HTS/Schedule B Units of Quantity Required on ALL Tariff Numbers as of January 1, 2020

Per our December 11th Shap Flash, all remaining tariff numbers will have a specific unit of quantity (UOQ) assigned to them.

Under the Trade Facilitation and Enforcement Act of 2015 (TFTEA), also referred to as the New Drawback Law, changes will be made to all HTS and Schedule B numbers for all units of measure currently indicated with an "X".

An "X" appearing in the column for units of quantity means that no quantity (other than gross weight) is to be reported. All tariff numbers with a quantity measure of "X" will be replaced with an actual unit of measure to be used by U.S. Customs and Border Protection (CBP) to facilitate drawback claims.

If the specified units of quantity do not appear on your commercial invoice, Shapiro will be asking for additional information in order to submit the correct units of quantity to the Automated Commercial Environment (ACE).

Implementation Timeline:

- January 1, 2019: All 659 dutiable statistical suffixes with a UOQ of "X" will have a specific UOQ assigned to them.
- June 3, 2019: List of the new UOQs for non-dutiable statistical suffixes with a UOQ of "X" posted to cbp.gov.
- January 1, 2020: All 851 non-dutiable statistical suffixes with a UOQ of "X" will have a specific UOQ assigned to them.

Links/Resources:

- TFTEA HTS UOQ Change Fact Sheet
- New HTSUS UOQ List (Dutiable) – already implemented effective 1/1/19
- New HTSUS UOQ List (Duty-Free) – to be implemented effective 1/1/20

Questions and concerns regarding the new UOQs can be directed to CBP's 484(f) Team – 484f@cbp.dhs.gov.

TRANSPORTATION NEWS:

IMO 2020 Mandate – Ready or Not, Here It Comes!

As referenced in our November Freight Report, we are roughly 1 month away from the IMO 2020 effective date, which mandates that carriers must burn 0.5% very low sulfur fuel oil (VLSFO) or operate vessels with exhaust scrubbers to meet IMO 2020 emissions regulations.

In light of the above, carriers have begun implementing various surcharges as a means of maintaining profitability and recouping the costs associated with adherence to IMO 2020. Earlier this month, we published a Shap Flash containing a list of surcharges broken down by carrier and alliance.

As of now, the surcharges are all over the place, with none of the offered "formulas" providing adequate clarity around the proposed price increases. Alliances are charging different surcharges than their counterparts who are operating the same size vessels, which indicates that there is still a lack of pricing uniformity and transparency in place among carriers. Because of this, many shippers are still convinced that carriers may be jacking up rates to help cover their own higher costs.

Carriers are holding firm with the higher surcharge rates to help supplement the money lost from switching to low sulfur compliant fuel alternatives. Analysts expect carriers' surcharges to increase after the January 1st deadline to help offset the next wave of higher operating expenses carriers must undergo while burning low sulfur fuel or using scrubbers.

Although it's still early, freight forwarders have begun to implement higher surcharges with little pushback from cargo owners. The real question is – what happens after January 1st?

Contact our marketing experts today for the latest news on the IMO rollout and to learn how Shapiro's network of agents and steamship line contracts can be leveraged to mitigate risk for your supply chain.

There Couldn't B-More Upgrades on the Horizon for the Port of Baltimore in 2020

Port of Baltimore Acquires Funding for Double-Stack Rail Access

The Maryland Port Authority announced the successful acquisition of the final $103 million in funding needed to move forward with plans to create double-stack intermodal rail access at the Port of Baltimore, an involved process that requires the vertical expansion of the Howard Street Tunnel to adequately accommodate double-stacked cargo.

The news brings renewed excitement to the Howard Street Tunnel project, which is expected to help Baltimore compete with other ports along the East coast for discretionary cargo routed to the Midwest. Currently, officials revealed that they have raised almost 80% of the total $466 million in funding needed to complete the project.

Sources of funding include:

- $125 million – Federal grants
- $147 million – Maryland Department of Transportation (MDOT)
- $91 million – CSX Transportation (rail line operator)

However, officials could not release the source of the latest $103 million in funding.

Port authorities have yet to announce a start date for the project, as CSX still needs to decide between two methods it could use to raise the tunnel. However, the entire project is estimated to take between 3 ½ to 5 years to complete.

The pursuit of double-stack rails in Baltimore has already taken 7 years thus far, as the project saw several failed attempts to solve the constraints brought on by the 121 year old, 1.7 mile long Howard Street Tunnel expansion.

Work to Begin on New 14,000 TEU Berth in Q1

The Port of Baltimore appears to be in hot pursuit of boosting cargo infrastructure across the board, as officials also revealed plans to expand one of the existing four berths at the Seagirt Marine Terminal in 2020.

The $120 million project will allow the port to handle two 14,000 TEU ships simultaneously and increase capacity overall. It will be completed in two phases by Ports America Chesapeake (PAC) and is expected to be completed in 2021.

Airlines Slash Cargo Volumes

Indications reveal that the turbulent air cargo market will continue to struggle as forwarders cut back their block space agreements with airlines as a result of a wariness to commit high volumes to a market with no signs of recovery.

Overall performance reports reveal that this year has been the weakest for air cargo since the global financial crisis and will likely result in a full-year decline for 2019. Some experts believe it was a bottom point for the market because of a 'perfect storm' of factors – which include trade wars, slowing global economic growth and political tension – and therefore host brighter outlooks for 2020. However, not everyone shares the same enthusiasm, as forwarders work to limit their commitments to air cargo and scale back operations.

For airlines, the news of impending scale backs has left a cloud of uncertainty, since they typically rely on the safety net that long term commitments provide in order to build future forecasts. With no predictable revenue stream in sight, airlines could be forced to rely on the spot market to meet budget expectations, which would ultimately increase their exposure to the risks of today's volatile air market.

Experts anticipate that forwarders will see a measurable drop in long-term prices as airlines operating both freighters and passenger aircrafts make the necessary adjustments to fill volume while also maintaining schedules. With very little negotiating power in many situations, these airlines often have little control over what they can charge for their services.

Unfortunately, the 2020 air cargo market outlook is expected to begin on a bleak note, with demand not expected to pick up until the second half of the year.

Potential Change to New Jersey Employment Laws Could Hurt Trucking

It appears that New Jersey is following in the footsteps of California's recently passed AB5 legislation that restricts the way companies can classify employees. Back in July, NJ Governor Phil Murphy commissioned a report which pushes the state to hold a magnifying glass over misclassified employees. The law, which passed on July 9th, allows the State Department of Labor to put a stop work order on companies that violate related laws. The report quickly grabbed the attention of NJ based trucking companies, who are now protesting proposed legislation by pushing for an exemption.

First proposed in the Senate, the S-4204 bill shifts the three-point test companies use to classify employees as independent contractors. In the traditional test a trucking company cannot hire an owner-operator as an independent contractor if they meet one of the below requirements:

- A: The worker is free to perform services without the control or direction of the company.
- B: The worker is performing work tasks that are outside the usual course of the company's business activities.
- C: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved the work performed

The proposed legislation addresses point B by removing the assumption that the worker is an independent contractor just because the work is done outside of the company that hires them. The new test would have a significant impact on the 90% of NJ port truckers currently operating under the definition and would doubtlessly cause labor slowdowns and driver/equipment shortages.

In today's market, trucking companies operate with a mixture of independent contractors and full-time employees, and they can rapidly scale their work force, as needed, by utilizing owner-operators.

The Teamsters Union, which protects workers, points out that employers of owner-operators that are currently classified as independent contractors are not required to contribute towards healthcare, insurance, fuel, taxes, tolls, repairs and truck purchase costs. They also have different requirements under overtime laws.

The bill has not yet been scheduled for review in any legislative session through January 13th. Although S-4204 is ready for a floor vote, the Assembly version, known as A5936, must still pass through an appropriations committee before it can reach a floor vote. While the legislation is stalled for now, trucking companies and Unions alike will be diligently keeping tabs on its progress.

Amazon Sellers No Longer Allowed to Use FedEx Ground Service for Prime

Third-party sellers on Amazon will no longer be able to use the FedEx Ground Delivery service for Prime shipments, according to a recent company announcement. The change is expected to go into effect this week and will last until Amazon determines that FedEx's delivery performance data improves. In the meantime, Amazon merchants will still be allowed to utilize FedEx Express for Prime shipments, though it's a much pricier option.

Amazon allowed third-party sellers to continue shipping via FedEx Ground over the past few months, despite the company parting with the service back in September. Although the company is said to be developing in-house delivery operations and utilizing independent contractors to handle deliveries in an effort to phase out its shipping competitors, vendors can still use FedEx Ground services on non-Prime orders (for now).

Third-party sellers accounted for nearly 58% of Amazon's retail activity in 2018, however the forecasted impact on FedEx is described as "miniscule". Analysts expect small businesses to be impacted the most by the limited shipping options available during the busiest time of the year.

As any online retailer knows, it's important to have a reliable partner on your side. Visit our website to learn more about our e-commerce shipping solutions and how we can help you scale sustainably!

Air Freight Limitation of Liability Increasing December 28th

Under the Montreal Convention, a multilateral treaty that provides for the uniformity of rules for the compensation of damages of passenger baggage and cargo, the liability for air carriers is set to increase from 19 SDRs per kilo to 22 SDRs per kilo on December 28, 2019.

Special Drawing Rights (SDR) is a term describing a measure of currency that fluctuates daily and is calculated by the International Monetary Fund (IMF) via several currencies. The SDR is reviewed by the International Civil Aviation Organization every 5 years to account for inflation.

As of December 13, the basic limit of air carrier liability for cargo loss or damage is 19 SDRs per kilo ($1.384 /per kilo), but this will increase approximately 14% by the end of the month, providing better compensation for cargo shippers and more exposure to carriers. However, in cases where air waybills state a higher carrier liability limit, then the basic limit applies to the damaged cargo and not the entire shipment, unless damage effects the whole shipment.

SHAPIRO 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.

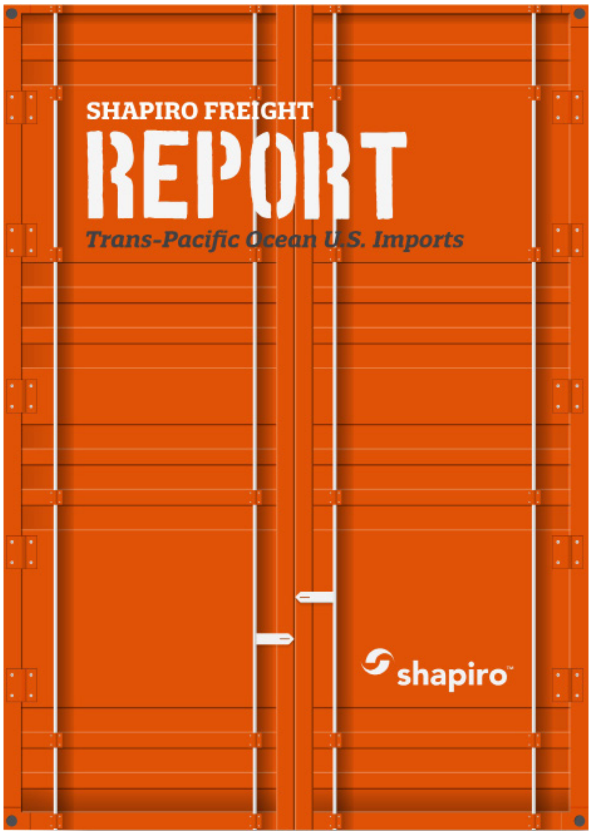
This month, we would like to recognize Shian Coleman, Customs Entry Specialist.

Shian handles some of our biggest accounts, which bring in a wide variety of items and could be a headache for most, but she handles it superbly. She is always on top of invoices and makes sure the correct information gets passed along. Shian goes above and beyond to reach out to customers to ask questions to help save time. By doing so, the team can whip through her requests and get them back to her promptly. Her hard work and effort exemplify what it truly means to be a team player. Congratulations Shian!

We encourage you to provide us with employee feedback! Please email us at hr@shapiro.com.

Shapiro Freight Report

This high-level, monthly review of the U.S. import freight market provides key insights into te 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!



In honor of our Canadian readership,
a tribute to Boxing Day.

The Main Event: Shippers Boxing Carriers on Box BAFs

Punchy Shippers' Jabs at Carriers Fuel a Fight

In December, shorter-term contracts and spot business were cornered for the first uppercuts for shipping costs based on low sulfur fuel implementation.

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