



▶ CHANGES IN THE WIND FOR HOW THE MPF IS ASSESSED. HOW WILL IT EFFECT YOU?

○ 1

○ Fall

○ 2011



▶ GENERALIZED SYSTEM OF PREFERENCES OR "GSP" EXTENDED WITH RETROACTIVITY

▶ IMMEDIATE CONSEQUENCES OF FDA FOOD SAFETY MODERNIZATION ACT OF 2011

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*Today*



## Merchandise Processing Fee Changes

ADDRESSING THE NEEDS OF INDIVIDUAL IMPORTERS AND THEIR PARTNERS

*How much does the Merchandise Processing Fee (MPF) increase and for what time period?*

On October 21, 2011, President Obama signed the Free Trade Agreements with Colombia, Panama and South Korea which Congress passed along with the renewal of GSP and Andean Trade Preferences. Also affected, MPF will be increased from 0.21% to 0.3464% for the period of October 1, 2011 (retroactive) to June 30, 2012. The minimum merchandise processing amount of \$25.00 remains the same; the \$485 MPF cap for formal entries remains in place.

*Must MPF be pre-paid for the period of October 1, 2012 and November 12, 2012?*

Probably not. While the GSP bill requires the MPF to be pre-paid between October 1, 2012 and November 12, 2012. Aspects of the MPF increase was done for accounting purposes to offset the Trade Bills. Congress will likely repeal this pre-payment requirement.

*What is the process for Importers to pay the increased MPF retroactive back to October 1, 2011?*

U.S. Customs and Border Protection (CBP) will generate bills for the period between October 1 and when the higher rate is implemented in order to collect the difference between the old and new rates for that time period. Any difference less than \$20 will be disregarded. According to the CBP Cargo Systems Messaging service (CSMS), the agency is in the process of modifying its automated system (ABI) to accept the new MPF rate but does not have an exact date for when the MPF system changes will be completed. The agency will provide approximately one week's notice before ABI starts requiring the higher MPF rate.

Source: Lindsay Hart Neil @ Weigler, LLP, FBB Federal Regulations "Mechanics of the Trade Bills Explained" October 25, 2011



## When are these new FTA's effective?

Unfortunately, entry into force did not occur when President Obama signed the implementing legislation into law on Friday, October 21. In fact, the earliest the agreements can enter into force is January 1, 2012. but the actual date the agreements enter into force will depend on how quickly each country comes into compliance with the obligations set forth in their respective agreements. We're hopeful this will happen for each agreement by springtime next year. We will be watching the activity in Columbia, Panama and South Korea closely.



## Are your FDA registration numbers valid?

### *Immediate Consequences of FDA Food and Safety Modernization Act of 2011*

*By: Evelina Hwang consultation with Gary C. Cooper Law Offices*

The new Food Safety and Modernization Act was signed into law on January 4 2011, and will have far -reaching implications for our business. Particularly onerous is the portion of the law which required all "U.S. Agents" under a foreign facility's registration number to be financially responsible for re-inspection charges of that foreign facility. This is to the tune of \$224 per hour domestically (\$335 outside the U.S.), to be billed directly, and without limit, to the U.S. Agent named on the foreign food facility registration. Although this obligation became effective October 1, 2011, the FDA still has no apparent mechanism for the payment process and, at this time, no process in place to handle the consequences of non-payment. The fact is that there could be thousands of registration numbers being put into question by previously named U.S. Agents who were knowingly or unknowingly named but now wish to decline the responsibility. However, in doing so, this may make thousands and thousands of registrations numbers, needed to pass Prior Notice, invalid. Again, once an U.S. agent declines this assignment as agent, the registration number will be invalid unless the foreign food facility nominates another U.S. Agent timely.

**Are you secure in your arrangements with your foreign  
supplier as to who will be paying these fees?**

Since any entry requiring FDA Prior Notice must have a valid registration number; to certify in the Customs entry process and with FDA registration numbers being confidential to the registrant only, you will want to ask your food importers about the following:

- ✦ If their registration numbers from their suppliers are valid.
- ✦ if they are listed as U.S. Agents and explain the consequences of being U.S. Agents.
- ✦ Whether they are secure in their arrangements with their foreign suppliers as to whom will be paying any re-inspection fees.
- ✦ Before transmitting entry, you may wish to call Prior Notice to get their "yes or no" if a registration number is valid. Know that many entries tied up with invalid registration numbers end up having to be cancelled/deleted with new entries having to be re-entered.

The process to decline assignment as the U.S. Agent is fairly simple. Per the FDA Industry Help Desk, a company need only submit a fax stating the food facility name, address and registration number with a request to decline assignment as U.S. Agent. FDA does also check with each nominated agent to determine if they accept or decline so a named U.S. agent should know when they have been newly nominated. It takes 4-6 weeks to be removed as a U.S. Agent and the factory has then 670 days to assign a new Agent. Remember the FDA registration and number is confidential only to the registrant so the foreign food facility will have to update and maintain their "secured" information. The request can be mailed to the address below or faxed to 301-436-2804. The FDA Industry System Help Desk is at 1-800-216-7331 (domestic) or 301-575-0156.

This horrible Catch 22 will be repeated thousands of times. FDA should get comments from our trade and our Importers so that the consequences will be unworkable without a payment process and a process for getting the held-confidential registration numbers. The Pacific Coast Council of which CBFANC is part of will be submitting a formal comment. However, your company and client importers should also do so. Per Federal Register (vol. 767, No. 147) of August 1, 2011, comments may be submitted by November 30, 2011 to: <http://www.regulations.gov> or to: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm 1061, Rockville, MD 20852.

## DUTY REFUNDS

### GSP and ATPA



How will refunds on duties paid on imports from GSP and ATPA countries be collected?

GSP and ATPA will now expire on July 31, 2013. The preference programs were extended retroactively back to when they originally expired - December 31, 2010 for GSP and February 12, 2011 for ATPA. Duty free treatment under GSP and ATPA resumes 15 days after the date the President signed the bill into law.

In order to get refunds for duties paid for ATPA, importers will need to request the refund from CBP in writing, either via post-entry amendment, post-summary correction, protest, or other letter. The refund process for GSP is automated if the importer filed their entries electronically, used the special program indicator for GSP (SPI "A" or "A+") on the entry summary and paid the duties; otherwise, the request process is the same as for ATPA.

Companies will have 180 days after enactment to request refunds.



# Why did Customs target my Cargo Container?

*Have you ever wondered why CBP has chosen to inspect your cargo?*

After the 9/11 terrorist attacks against the United States, Customs and Border Protection (CBP) have updated their cargo examination processes in order to better protect American borders from contraband. One of these changes is the introduction of inspectional technology, known as Vehicle and Cargo Inspection System (VACIS). This system utilized low-energy x-ray and/or low-energy gamma radiation in order to effectively inspect cargo without slowing down the import process. It also increases the number of daily inspections and since VACIS provides a better picture, physical examinations are less frequent. VACIS allows Customs to identify contraband, such as illegal drugs, currency, or guns.

CBP will identify which containers will be inspected prior to the vessel's arrival, and the terminal must make the cargo available for CBP inspection 48 hours after arrival. If you are a direct filer, you will be notified of a hold by an ABI cargo release response. CBP typically opts to inspect cargo from suspected or actual law violators. VACIS can be used at all air, sea and land ports and even for the most difficult commodities.

## *If Contraband is detected...*

During the exam, the cargo is placed in a shielded enclosure, and gamma rays are sent through the cargo. The amount of gamma radiation detected informs CBP of the density and thickness of the cargo, allowing them to identify contraband. It takes only seconds to scan, but it takes 30-40 minutes per container to analyze the image. If any concern arises after a VACIS scan or the shipment is high risk, the container could then go to a Container Examination Station (CES) where individual boxes or pallets are unloaded and scanned with a smaller x-ray machine. It takes about a day to unload, scan, and reload 12 containers. CTPAT members go to the front of the line if their cargo is taken to a CES.

Since CBP is unable to determine what exactly is in each container, they are looking to the importer for help. Importer Security Filing is a new initiative that will allow CBP to determine which shipments are at a higher risk to National Security threats. Now that the importer is required to relay the origin contents, etc. of the container, CBP has a head start in their inspection process.



## *Types of Exams and Functions:*

**VACIS/NIJ/X-Ray Exams** - X-Ray Technology. Customs uses these exams to look for contraband firearms or even stowaways (human shapes detected with X-Ray). Customs targets containers based on origin countries and manifest description. Origin ports which are "throughfares" for drug trafficking are frequently targeted.

**Gamma Ray Exams** - The Gamma Ray exams are radiation technology which the containers are driven through a portal. These exams are used to detect any radioactive materials which would indicate a nuclear type bomb within a container.

**Customs Agriculture Exams** - The Agriculture Exam Teams were incorporated into Customs when the Dept. of Homeland Security was formed. Agriculture exam units were originally a part of the U.S. Dept. of Agriculture. USDA as a separate agency which inspects and enforces plants, meats, etc. CBP Agriculture reviews manifests and inspects for unauthorized/non-permit meats, poultry (Avian), food safety related, and stowaway pests. Tile/slab remains a huge concern for possible pests for which Agriculture inspects. Since X-Ray cannot pick up on these stowaways. Agriculture Exam Team will often accompany the CET Exam team and when possible a tailgate is done at the terminal. If requisited,, containers can also transfer to an Exam site for full or partial devanned exams.

**Trade Exams** - Formally called Merchandise Exam Teams, they target and inspect for merchandise that matches manifest and commercial invoice descriptions; if goods are legally marked with country of origin, and currently more on trade infringement (illegal trademarks, fraud). The Trade Teams are also inspecting for other government agencies of which recently more targeting for CPSC (Consumer Product Safety Commission) concerns on lead paint and plastic phthalates which have been determined to be hazardous to children.

**ISF** - The Importer Security Filing enforcement date was Jan. 26, 2010. Compliance of this security initiative and good import documentation is part of having a "clean:" record but will not prevent exams. Currently non and untimely ISFs will generate a greater than 50% changes of XRay exam. Next is Phase 4 is full enforcement where Customs will actively place "Do Not Loads" at origin and monetary penalties for non-and late ISF filings.



## Rest of the World...

- ✚ Europe is requiring advanced cargo information before loading on the vessel, for all cargo going to or through Europe by vessel.
- ✚ Advanced cargo information for Air cargo is next for Europe.
- ✚ China has begun requiring advance cargo information for one seaport, other ports are expected to come online in stages.
- ✚ Canada and Mexico have similar requirements.
- ✚ Other countries are seriously looking at advanced cargo information requirements.

*This means that you will eventually be required to give the exporting carrier certain data elements before the carrier can load your export cargo.*

## What is new in the World of Exports!

### Census NPRM

Census and CBP are currently working on the Final Rule. The Publication date is currently unknown. Potential changes: Option 4, Split shipment procedures (all modes), Shipment Reference Number, Country of Origin for exported commodities, Requiring equipment info via ocean carriers, Household goods, Vehicle exports, License applicant address, Changes to definitions.

### CBP system changes

Proposed changes are:

- ✚ Automated Export System (AES) will be updating the platform and improving functionality (improved edits).
- ✚ Pre-departure electronic cargo manifest (All modes of transportation), Working with various US agencies to incorporate their requirements, working with the carrier associations, and a complete re-design of the existing VTM.
- ✚ Automated Targeting System-Outbound
  - Tied to both AES and the Manifest systems.
- ✚ Access via the ACE portal.
- ✚ Reports generation capabilities.
- ✚ CBP regulation changes will be necessary to implement.

### USXPORTS

USXPORTS is working with the Directorate of Defense Trade Controls & the Bureau of Industry and Security to develop a single licensing:

- ✚ Option A: One portal into both licensing agencies.
- ✚ Option B: One portal into a single licensing agency for all commodities.

*OFAC will eventually be included.*

### Directorate of Defense Trade Controls

Responsibilities will include:

- ✚ Reviewing commodities controlled under the ITAR to determine which commodities are essential to national security
- ✚ Transferring some commodities to the Commerce Control List..
- ✚ Working with USXPORTS and BIS.

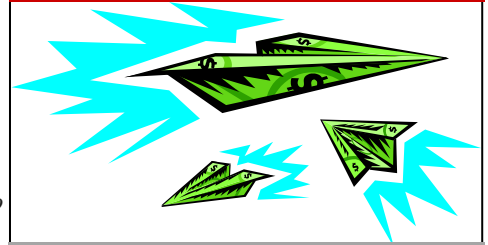
*Expect a number of regulations changes as commodities are transferred from one agency to another.*

### Bureau of Industry and Security

BIS is reviewing the commodities controlled under the EAR. They will be working with USXPORTS regarding the license application process, working creating new license exceptions.

*Expect to see a number of Regulation changes.*

## Informal Entry Limit going up to \$2500?



U.S. Customs and Border Protection is proposing to increase the informal entry limit from \$2,000 to its maximum statutory limit of \$2,500. CBP also proposes to remove regulatory language requiring the use of a formal entry for certain shipments of textile or apparel products, which is no longer needed due to the elimination of quotas formerly established under the Agreement on Textiles and Clothing. Comments on this proposed rule are due no later than Dec. 27, 2011.

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures. Formal entry generally involves the completion and filing of one or more forms (such as CBP Form 7501, Entry/Entry Summary, which contains detailed information regarding the import transaction) or their electronic equivalent as well as the filing of commercial documents pertaining to the transaction. However, CBP regulations exempt from formal entry imported merchandise whose aggregate value does not exceed a specified amount.

The informal entry limit has remained at \$2,000 since 1998. CBP believes that increasing this limit by \$500 will reduce the overall administrative burden on importers and other entry filers by expanding the availability of the simplified informal entry procedures. CBP has also determined that this increase will save the trade community approximately \$11 million in merchandise processing fees annually (a figure that could rise considering that the MPF was recently increased from 0.21% to 0.3464%).



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