

TRADE NEWS WEEKLY

August 1 – August 5, 2022

A summary of international business news prepared by the Hawaii Foreign-Trade Zone 9 with the collaboration of the Research and Economic Analysis Division of the Department of Business, Economic Development & Tourism, and based on research and shipment data from *Sandler, Travis & Rosenberg P.A.*, which tracks companies involved in global trade. Other news sources may occasionally be included where indicated.

Customs Enforcement Efforts Highlight Importance of Compliance

Several of U.S. Customs and Border Protection's trade enforcement measures accelerated in the first half of fiscal year 2022, highlighting the continuing need for importers to develop, implement, and monitor effective compliance programs.

According to statistics recently made available by CBP, the agency is on pace to exceed its FY 2021 numbers in a few areas. For example, if current patterns hold, CBP would see increases of 8.8 percent in the value of import safety seizures, 42.9 percent in withhold release orders, and 52.5 percent in cargo detentions related to WROs.

It is also worth noting that trends over the past five years reveal other notable increases. Again, if the second half of FY 2022 sees similar numbers as the first, the number of trade penalties issued will be up 52.5 percent from FY 2018 and trade liquidated damages will be up 100 percent. While the number of seizures for intellectual property rights and import safety reasons is not on pace to increase, the value of those seizures looks set to jump 100 percent and 627 percent, respectively. Most notably, the number of cargo detentions related to withhold release orders is on tap to exceed 2,200, compared to just six five years ago, and the value of such detentions would be more than \$550 million, up from a mere \$218,000.

To evaluate importer compliance and identify problems, CBP frequently uses risk analysis

and survey assessments. RASAs can subject importers to detailed scrutiny and require significant documentation as evidentiary support. If they reveal perceived compliance risks, RASAs may result in full-blown audits and enforcement actions may follow.

Source: *Sandler, Travis & Rosenberg P.A.*

Seafood Import Certifications May Be Automated

The Department of Commerce's National Marine Fisheries Service is developing a proposed rule that would automate the submission of certifications of admissibility allowing the entry of fish or fish products that are otherwise subject to trade restrictions. NMFS currently uses paper format COAs that require signatures but wants to move COA processing to the Automated Commercial Environment, noting that doing so may require the submission of additional data elements.

Prior to drafting a proposed rule, NMFS is inviting comments from importers, exporters, and customs brokers on the reporting and recordkeeping burden of the COA, the procedures for using certification in the entry filing process, and ways to reduce the reporting burden and expedite release of admissible shipments through ACE. Specific issues NMFS is interested in include the impact on entry filing if the COA process is automated in ACE; supporting documents available to importers that could be submitted through ACE at entry filing to validate COA information; and whether NMFS should develop an electronic version of the COA so foreign exporters can enter required information online and U.S. importers can gain



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secure access to individual shipment information so they can transfer it to ACE via the entry filing process. Comments are due no later than August 24.

Source: Sandler, Travis & Rosenberg P.A.

Savings Strategies: E-Commerce and Section 321

There are a number of duty savings strategies companies can use to conserve cash, lower customs duties and tariffs, and seek refunds. These strategies are always a high priority for businesses involved in international trade, but particularly so during this difficult period. This is the third in ST&R's series of articles examining these strategies in more detail and covers the use of Section 321 duty exemptions. Previous articles addressed the first sale rule and transfer pricing.

19 USC 1321, commonly referred to as Section 321, enables U.S. Customs and Border Protection to admit qualifying goods duty- and tax-free (and with fewer information requirements) provided they are imported by one person on one day and have a total fair market value of \$800 or less. Currently, this so-called de minimis exemption applies to not only base MFN duties but also Section 301 tariffs, including those in place against hundreds of billions of dollars' worth of imports from China.

Use of this exemption has skyrocketed alongside the growth of direct-to-consumer (B2C) e-commerce, which has further accelerated as more consumers shop from home. This increase has prompted concern among some policymakers, but legislative proposals that would impose significant limitations on Section 321 appear to be making little headway at present and a similar regulatory proposal does not appear to be under active consideration.

In addition, an ongoing CBP test is yielding faster clearances for Section 321 shipments, which means fewer delays and lower costs. This test allows such shipments (including those subject to partner government agency data requirements) to be entered via a new informal entry type 86 in the Automated Commercial Environment. Using this method, shipments

can be cleared quicker than it may typically take for clearance via manifest.

While Section 321 shipments thus offer an opportunity to lower tariffs and other costs, in assessing this opportunity companies should carefully consider the accuracy of the information provided for such shipments to avoid cargo holds and possibly seizures due to PGA or intellectual property compliance issues.

Companies should also be aware that, due to concerns that the increasing volume of Section 321 shipments is affecting its import compliance efforts, CBP continues to consider the transmission of additional data elements, by different entities at different times throughout the supply chain, for Section 321 goods in advance of their arrival. This could eventually lead to changes in the Section 321 data submission requirements.

Source: Sandler, Travis & Rosenberg P.A.

21st Century Customs Framework Sees Progress

More than three years after launching an effort to develop the 21st Century Customs Framework, U.S. Customs and Border Protection is starting to make some progress with the help of the trade community. ST&R's Lenny Feldman reports that the most recent meeting of CBP's Commercial Customs Operations Advisory Committee provided some interesting insights on the 21CCF.

First, COAC revealed that statutory changes in several areas are on their way toward draft language. These include de minimis entry data standards, exchange of enforcement information with the trade community, recordkeeping requirements for additional parties, expedited procedures for the examination and detention of merchandise, protests for International Trade Commission exclusions, fines for trademark infringing merchandise, and arrival, reporting, and clearance violation penalties for other involved parties.

Second, COAC noted that in other areas, work will continue in an attempt to reach consensus on new statutory language. These include advance information for formal entry, expanded



use of advance electronic information, importer of record sanctions, bonds and security requirements, additional parties to antidumping and countervailing duty evasion actions, seizure and penalty procedures for inadmissible goods, and commercial penalty standards of culpability.

Third, to balance provisions emphasizing enforcement, COAC called for the codification of partner government agency engagement with the trade, a true one U.S. government cargo release through unified cargo processing and release protocols, mandating CTPAT-PGA partnership programs, and reducing the merchandise processing fee for CTPAT members. Other recommendations focused on data sharing protocols between CBP and PGAs, harmonizing PGA data collection and analytics, evaluating account-based processing, enhancing trade automation, and modernizing entry processing.

Source: Sandler, Travis & Rosenberg P.A.

CBP Plans to Improve Screening of Crated Cargo

U.S. Customs and Border Protection has said that by November 30, it will take actions to address concerns raised in a recent report about its screening of crated cargo.

According to a Government Accountability Office report, non-containerized cargo accounted for about 32 percent of the \$1.5 trillion total maritime cargo value in the U.S. in 2020. This category includes breakbulk cargo, such as goods packaged and shipped on pallets or crates, as well as bulk cargo such as crude oil, chemicals, grain, coal, and lumber.

CBP's risk-based inspection approach for non-containerized cargo includes a screening evaluation of all such shipments for risks, further targeting of potential high-risk shipments, and physical examination of shipments identified as high-risk. CBP allows for some variation in inspection activities based on differences in local factors such as available CBP resources, type of cargo processed, and port size.

CBP's July 2021 cargo processing guidelines state that crated breakbulk cargo is of particular concern because (1) some pieces are the same size and shape (and thus offer the same level of concealment) as shipping containers, (2) it is more difficult to open compared to containers that CBP can open and reseal, and (3) its irregular size, shape, and configuration may render some inspection techniques ineffective.

However, the report notes, those guidelines do not identify additional actions or measures for CBP officers at seaports to implement to address these risks. CBP leaves it up to individual port directors to determine the best way to handle these risks, but the GAO said that doing so without specific guidance may allow for local actions that (1) allow for the release of crated cargo without sufficient targeting or examination, or (2) adversely affect the facilitation of trade and business.

In response to the GAO's report and recommendations, CBP said it would enhance its risk mitigation strategies to include additional recommended measures such as the use of canine resources and non-intrusive imaging and inspection technology. It will also initiate radiation screening measures prior to exit from the terminal for crated breakbulk cargo deemed to be high-risk for national security purposes. Further, CBP will update its July 2021 guidance to provide field personnel with the information necessary to use the full range of inspection tools and techniques available to them. CBP anticipates completing these changes by November 30.

Source: Sandler, Travis & Rosenberg P.A.

Forced Labor Enforcement Could Increase with Expanded Partnership

Improved and increased efforts to combat forced labor in global supply chains are the goal of an expanded partnership the Department of Homeland Security recently announced with a non-governmental organization.

According to a DHS press release, the NGO will provide DHS with documentary evidence to

support allegations that forced labor is occurring at manufacturing facilities in countries of interest and help arrange interviews with victims identified in ongoing criminal cases. DHS states that these efforts will enable it to further streamline intelligence, initiate new criminal investigations, and advance ongoing investigations to hold corporations and individual perpetrators accountable for forced labor in their supply chains.

DHS states that partnerships with NGOs and civil society organizations are essential for its efforts to identify corporations using forced labor in their supply chains; advance counter-human trafficking law enforcement operations; protect victims; and enhance prevention efforts; including the first-ever supply chain criminal investigations made possible by this new partnership. DHS adds that the ability of NGOs and CSOs to connect with forced labor victims to gather preliminary information has played a critical role in supporting the department's criminal investigations of forced labor currently underway around the globe.

Source: Sandler, Travis & Rosenberg P.A.

Tuna Imports Allowed from Six Countries

The Department of Commerce's National Marine Fisheries Service has renewed its affirmative findings under the Marine Mammal Protection Act for Colombia, Ecuador, El Salvador, Guatemala, Mexico, and Spain. These findings continue to allow for the period April 1, 2022, through March 31, 2023, the importation into the U.S. of yellowfin tuna and yellowfin tuna products (1) harvested in the eastern tropical Pacific Ocean by purse seine vessels operating under these nations' jurisdiction, or (2) exported from these nations.

Similarly, NMFS has issued a new affirmative finding for Peru, which will allow imports of yellowfin tuna and yellowfin tuna products harvested in the ETP by purse seine vessels operating under Peru's jurisdiction or exported from Peru for the period April 1, 2022, through March 31, 2027.

The MMPA allows for the importation into the U.S. of yellowfin tuna harvested by purse seine

vessels in the ETP from a nation with jurisdiction over purse seine vessels with carrying capacity greater than 400 short tons that harvest tuna in the ETP only if the nation has an affirmative finding issued by the NMFS. Every five years, the government of the harvesting nation must request a new affirmative finding and submit the required documentary evidence. On an annual basis, NMFS must determine whether the harvesting nation continues to meet the requirements of its five-year affirmative finding.

NMFS notes that the above finding renewals does not affect implementation of an intermediary nation embargo under 50 CFR 216.24(f)(9), which applies to exports from a nation that exports to the U.S. yellowfin tuna or yellowfin tuna products subject to a ban on imports into the U.S. under section 101(a)(2)(B) of the MMPA.

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