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## Tradetalk



A ROGERS & BROWN NEWSLETTER

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INT'L. FREIGHT FORWARDERS, FMC# 1194, CUSTOMHOUSE BROKERS, CBH# 4005, INT'L. AIR TRANSPORTATION ASSOC. IATA# 01-17027  
December 2005

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### **Closing Out a Year to Remember – 2005**

As we prepare to close out 2005 we can reflect back on the many disasters we encountered, both manmade and the result of "Mother Nature". From hurricanes (and more hurricanes and more hurricanes), to earthquakes, to floods, to fires, to continued terrorist bombings worldwide, 2005 has been a year to remember (or forget for many individuals). After the tsunami in 2004, most of us thought or hoped that 2005 would be a quiet year. In saying all of the above, it should make us more appreciative and thankful if our part of the country or world was not adversely effected by one of these terrible events. In looking back we can again only hope that 2006 will become an uneventful one in terms of disasters. Even though business can always be better all things considered this past year has been a pretty good one. Rogers & Brown's successes have been possible only by the trust and support of our many loyal customers and as importantly, the conscientious and excellent service provided by our employees. We appreciate the business that you allow us to handle and we look forward to the new year in anticipation that 2006 will be a great year for all of us. Remember, Ships, Trains, Planes nor Trucks Move Products, People Do. Our people strive to provide the best service possible in making certain our customers receive their products on time. Thank you for allowing us that opportunity year in and year out.

### ***Annual Aviation Security Notification***

Effective January 31, 1994, U.S. passenger airlines may only accept consolidated cargo when either such cargo is associated with a written certificate stating that the indirect air carrier has adopted and is carrying out an FAA-approved security program in accordance with Title 14 Code of Federal Regulations, Part 109, or such cargo is inspected by the accepting air carrier by opening or by x-ray examination. Rogers & Brown has

complied with these regulations and in addition to these new security measures we must also notify our airfreight customers of the following:

**“Cargo items tendered for air transportation are subject to aviation security controls by air carriers and, when appropriate, other government regulations. Copies of all relevant shipping documents showing the cargo’s consignee, consignor, description, and other relevant data will be retained on file until the cargo completes its air transportation.”**

The above notification is required to be published annually in this newsletter or in a separate notice effective January 31, 1994 forward.

**“The only thing necessary for evil to triumph is for good men to do nothing.”  
Edmund Burke**

**Notice to Clients on Method of Duty Payments**

Customhouse brokers are mandated to notify their import clients each year of their right to make duty payments in the following format:

**“If you are the importer of record, payments to the broker (Rogers & Brown Custom Brokers, Inc.) will not relieve you of the liability for Customs and Border Protection (CBP) charges (duties, taxes, or other debts owed CBP) in the event the charges are not paid by the broker. Therefore, if you pay by check, CBP charges may be paid with a separate check payable to the ‘CBP’ which shall be delivered to the CBP by the broker.”**

Rogers & Brown, as always, encourages all importers to issue checks payable to CBP for their import duties or participate in CBP’s Automated Clearinghouse (ACH) program. If you have access to the Internet, go to the U.S. Customs website [http://www.cbp.gov/xp/cgov/import/operations\\_support/automated\\_systems/ach/](http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ach/) for detailed information regarding ACH and how it works, or please contact our corporate controller, Ms. Cindy Weaks at (843) 577-3630, or your account representative, and they can provide you with this information. We also ask that you respect the fact that our service fees are minimal in comparison to duties as well as other charges, and we always appreciate your payment of our invoices in adequate time before duty, freight, and other charges are due.

**Rogers & Brown Holiday Reminder**

**Christmas Day**

**December 26<sup>th</sup>**

**New Year’s Day**

**January 2, 2006**

**Australian Quarantine & Inspection Service (AQIS)**

**Changes to Import Air and Ocean freight effective 1st January 2006**

**ISPM 15 Compliant Wood Packaging**

Australia will expand the implementation of the international standard for solid wood packing and dunnage (the International Standard for Phytosanitary Measures (ISPM) # 15: Guidelines for Regulating Wood Packaging Material in International Trade (ISPM 15) to Air and Ocean Freight Break Bulk / Ro-Ro shipments to cover all solid wood packing and dunnage.

From 1st January 2006, AQIS will require mandatory compliance with ISPM 15 for solid wood packaging and dunnage used in supporting, protecting or carrying *Air cargo as well as Ocean cargo* (including break bulk) imported into Australia. In the event of non-compliance, the timber will be treated, destroyed or re-exported.

If not marked with ISPM 15 compliant stamps, AQIS will accept evidence of the offshore treatment of timber packing associated with Air and Ocean break bulk cargo. AQIS will continue to accept packaging which meets existing non ISPM 15 AQIS requirements **for containerized cargo only**. Inspection will no longer be offered as an option for any imported wood packing and / or dunnage regardless of the mode of transport.

For AQIS purposes, ISPM 15 compliant wood packaging:

- a) Will not require a treatment certificate. For Air and Ocean break bulk cargo there will be no requirement to present additional documentation regarding the treatment of timber packing. Instead, the current break bulk and air cargo surveillance programs will be modified to monitor compliance.
- b) Will not need to satisfy the AQIS 21 day rule. There is no limitation on time between treatment and shipping.

**In Summary: In the event of non-compliant timber being detected by an AQIS inspection on arrival, AQIS shall direct the timber for treatment, destruction or re-export. Arrangements to comply with an AQIS non compliance direction will delay release and delivery and add costs.**

### **Random Surveillance / Verification Inspection of Cargo**

The Australian Quarantine and Inspection Service (AQIS) have announced the trial of random surveillance / verification inspection and data collection as part of the Import Clearance Effectiveness Project (ICE Project).

### **How will the ICE Project affect Industry?**

Random surveillance / inspections and data collection will commence at Customs Examination Facilities (CEF's) and at importer's premises around Australia during September to November 2005. Quarantine Officers will carry out physical inspection of cargo and collect data which will be cross referenced against the data contained in the import declarations lodged with the ACS and AQIS. This will provide AQIS with the data required to evaluate the effectiveness of the Import Clearance activities which are, in the main, based on acquittal of goods against documentation. This is the first stage of the project and, after data evaluation, more targeted verification inspections are envisaged.

### **How will I know if I am affected?**

Activities at CEF's will have no impact except when items subject to quarantine are intercepted in which case the usual "Order into Quarantine" will be issued. Surveillance/Verification inspections will be selected

randomly based on consignment COMPILE numbers. These consignments will be subject to inspection (if containerized "seals intact" will apply) at the importers premises.

Where a 'Surveillance/Verification - Follow Up Inspection Required' direction is placed on an AIMS entry the importer / agent will be required to contact AQIS for a mutually convenient inspection time to carry out unpacking under AQIS supervision. If AQIS cannot attend within 24 hours of the requested inspection time, due to other operational commitments, the 'Surveillance/Verification - Follow Up Inspection' may be waived. During the initial trial period there will be no charge for this AQIS activity unless items of Quarantine concerns are identified.

## **Methyl Bromide Fumigations must be performed according to the AQIS Methyl Bromide Standard**

The AQIS Methyl Bromide Standard (implemented in 2001) supersedes all previous fumigation advice. The following statement on treatment certificates will not be accepted:

"When presented for fumigation, the (*description of cargo*) was tightly stowed and was wrapped in (*description of packing materials*), so no assurance can be given that the fumigant penetrated the wrapping".

To clarify, the fumigation certificate should only include details of what goods have been targeted for fumigation. If the goods that are targeted for fumigation are covered or packaged using gas impervious material (such as plastic wrapping or laminated plastic films, lacquered or painted surfaces, aluminum foil, tarred or waxed paper), this must be opened, cut or removed, prior to fumigation, to allow adequate gas penetration into the cargo and subsequent airing.

Fumigators must make every effort to check the goods for impervious materials prior to fumigation. If the fumigator is unable to check cargo for the presence of impervious materials (for example, if some of the goods are hard to access and examine), or cut or adequately cut or open impervious materials, the fumigator must advise the customer that they are unable to perform the fumigation. For current fumigation advice, please refer to the [AQIS Methyl Bromide Standard](#), on the AQIS website.

## **CAFTA Overview**

The Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) was approved by the U. S. Congress in July 2005 and was signed into law by the President of the United States on August 2, 2005. The CAFTA-DR has been approved by the legislatures in the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. According to the International Trade Administration, as of November 2005, approval is still pending in Costa Rica. The Agreement will enter into force on a date to be agreed upon among the parties.

The Agreement provides for the elimination of customs duties on **originating** goods traded between the parties. The parties are defined as the countries which are parties to the agreement (U.S., Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic). Duties on most tariff items covering industrial and consumer goods will be eliminated as soon as the agreement becomes effective. Duties on other goods will be phased out over periods of up to ten years. Some agricultural goods will have

longer periods for elimination of duties, or may be subject to other provisions, including, the application of preferential tariff rate quotas.

## **Textiles and Apparel**

Duties on nearly all originating textile or apparel goods will be eliminated when the agreement becomes effective. The agreement provides for benefits for textiles and apparel goods to be retroactive to January 1, 2004. Entries of textiles and apparel goods made on or after January 1, 2004, and before the date that CAFTA-DR goes into effect, that are from a CAFTA-DR country and which would have qualified as an **originating** good under CAFTA-DR, will be liquidated or re-liquidated at the applicable rate of duty under CAFTA-DR and any excess duties paid will be refunded. Until CBP provides guidance to the trade, it is unclear exactly how the retroactive application of duty free benefits will be handled. We anticipate that importers will be required to apply for duty refunds on specific entries once the agreement enters into force (as opposed to CBP automatically issuing duty refunds). It should be noted that apparently there are questions about the constitutionality of this retroactive provision in at least two of the CAFTA countries. Therefore, until final implementation of the agreement, it is uncertain how this retroactivity provision will be handled.

Generally speaking, a textile or apparel good will qualify as an **originating** good only if all processing after fiber formation takes place in the territory of the United States or another CAFTA-DR country, or if there is an applicable change in tariff classification under the specific rules of origin contained in the agreement. The type of “processing after fiber formation” contemplated by the agreement includes yarn spinning, fabric production, cutting and assembly, etc.

The scheme to determine whether a good is an **originating** good under CAFTA-DR is very similar to the North American Free Trade Agreement (NAFTA).

Specifically, CAFTA-DR provides that a good is an originating good where:

- a) it is a good wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries;
- b) it is produced entirely in the territory of one or more of the CAFTA-DR countries and
  - a. each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in the rules of origin; or
  - b. the good otherwise satisfies any applicable regional value content or other requirements specified in the rules of origin; and the good satisfies all other applicable requirements of the rules of origin; or
  - c. the good is produced entirely in the territory of one or more of the CAFTA-DR countries exclusively from originating materials.

There are also specific de minimus rules relating to textile and apparel goods which may help in originating such goods. Generally, this rule provides that if a textile and apparel good does not originate because certain fibers or yarns used in the production of the component of the good do not undergo the applicable change in tariff classification under the rule of origin (i.e., they do not tariff shift), then the finished good may nevertheless be considered an originating good if the total weight of all such yarns or fibers in that component

is not more than 10% of the total weight of that component. An exception is made to this de minimus rule for goods containing elastomeric yarns. Elastomeric yarns must be wholly formed in the territory of a CAFTA-DR country.

### **Certificates of Origin**

Claims for preferential tariff treatment may be based on either:

- 1) a written or electronic certification by the importer, exporter or producer; or
- 2) the importer's knowledge that the good is an **originating** good, including reasonable reliance on information in the importer's possession that the good is an originating good.

Certifications will not need to be made in a prescribed format, provided that the certification is in either written or electronic form and contains the name and contact information of the certifying person; the HTS number and description of the good; information demonstrating that the good is originating; date of certification; in the case of a blanket certification, the period that the certification covers.

NOTE: The agreement provides that the parties have 3 years from the effective date of the agreement to authorize electronic certifications and also 3 years to implement item 2, above, which allows for certification based only on the importer's knowledge. Therefore, we will most likely not see these as immediate methods of certification once the agreement goes into effect.

**“Tell them what to do and they will surprise you with their ingenuity.”  
General George S. Patton, Jr.**

### **New Import Levels for China Established**

The Committee for the Implementation of Textile Agreements has agreed upon new Import Levels and the ELVIS (Electronic Visa Information System) requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in the People's Republic of China. The effective date of the new agreement is January 1, 2006. The document outlining all of the guidelines and new levels can be found on the References Section of our website. As outlined in the notice, more information on the quota status of these limits can be obtained from the Customs and Border protection website at <http://www.cbp.gov> or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>. You can also call your Import Entry Specialist or contact Keith Rourk or Floyd Sirico at 843-577-3630 for assistance or additional information.

**“There is not a right way to do a wrong thing.”**

### **Continuity of Operations Testing**

This recent article was published in the newsletter of our network integrator partner, eGroup, Inc. eGroup is a Charleston based South Carolina technology firm with offices in Mt. Pleasant and Columbia, SC and has played an integral part in our technology development for many years. You can read more about eGroup at <http://www.egroup-us.com/home/>.

“Charleston, SC” – Executing a plan developed by eGroup, and utilizing Windows Clustering and VMware technologies for critical business applications, Rogers & Brown Custom Brokers successfully tolerated a simulated site denial event at their Charleston, SC headquarters location.

According to Sherry Lawrence, Director of Information Technology at Rogers & Brown, “Having this system in place provides a level of readiness that we have never achieved before and even though the end users aren’t aware of it, this makes a major difference in the overall well being of the company, the employees of R&B, and our customers.”

This “Continuity of Operations” or DR/CoOp plan, that was developed over several years and integrates critical but dissimilar technologies, was put into test this weekend when all connectivity was dropped for the HQ location. The failover location, chosen for logistical efficiencies by Rogers & Brown, had been prepared beforehand to accommodate critical systems and network services for this sort of geographical “switchover.” eGroup authored and implemented major elements of the DR/CoOp plan – including the deployment of all network access in a fully meshed site-to-site VPN – in addition to the processes and procedures necessary to failover/failback each site.

One of the most cost-efficient of eGroup’s plan, which does not rely on high-dollar bandwidth or storage area network technology, is the use of VMware to virtualize critical server elements for reconstitution in the failover site.

Mike Fowler, VP of Finance and Administration for the firm, had this to say, “I know that a lot of planning and hard work has gone into helping Rogers & Brown reach this state of readiness with our Disaster Plan. It is my belief that this puts us among the elite when it comes to having the ability to continue to operate and remain a viable, operating company in the event of a disaster.”

**“If everyone is thinking alike then someone is not thinking.”**  
**General George S. Patton, Jr.**

### **Management Changes/Promotions**

Raymond Kelley, employed by Rogers & Brown since March of 1987 has been promoted to Vice President of Operations, placing him over all Rogers & Brown Import and Export operations. Mr. Kelley has worked in all areas of operations throughout his career at Rogers & Brown and is one of the most knowledgeable individuals in our company, according to Capers Barr, President of Rogers & Brown. Kelley, originally from Johnston, SC is a 1985 graduate of the College of Charleston. He is a licensed Customhouse Broker and has taught classes in taking the Customs Brokers Exam and in Hazardous Material documentation handling.

Karen Eichelberg, formerly manager of our Charlotte Division, moved to Charleston in October of 2004 was promoted to Inbound Transportation Manager this past March. Eichelberg joined Rogers & Brown originally in 1988 working in our warehousing division, Brown Distribution, later moving to BOSS International, our NVOCC division. After a brief move out west, Ms. Eichelberg rejoined Rogers & Brown in our Charleston Export Division in 1996. In July of 1997 she moved to Charlotte, NC as Division Manager returning to Charleston in October of 2004 as Special Projects Coordinator for our Transportation Group. Ms. Eichelberg is originally from Michigan.

## **NEW MANUFACTURER IDENTIFICATION CODE (MID) REQUIREMENTS FOR TEXTILE AND APPAREL IMPORTS**

US Customs and Border Protection (CBP) has published interim amendments to the Customs Regulations relating to the country of origin of textile and apparel products. These amendments place new obligations on importers of such products that, if not complied with, may result in rejected entries and the assessment of monetary penalties. The amendments reflect changes brought about, in part, by the elimination of quotas on the entry of textile and apparel products from World Trade Organization (WTO) members. The interim regulations are effective as of October 5, 2005.

The interim regulations eliminate the requirement that a textile declaration be submitted for all importations of textile and apparel products, requiring instead that the importer identify the manufacturer whose processes confer country of origin on the article through the Manufacturer Identification Code (MID) required on the entry. Section 102.23 has been added to the Customs Regulations and sets forth the following rules concerning the construction of the MID.

- The MID should be constructed from the name and address of the entity performing the origin-conferring operations, according to the applicable rules of origin. It is important to note that different operations confer origin depending on the specific textile or apparel article involved; as a result, the relevant manufacturer that must be identified may vary. Trading companies, agents, sellers other than manufacturers, etc. cannot be used to create the MID for textile and apparel articles.
- The MID must be accurately constructed using the methodology set forth in the new Appendix to the Customs Regulations, including the use of the correct two-letter International Organization for Standardization (ISO) code for the country of origin.
- When a single entry is filed for products of more than one manufacturer, the products of each manufacturer must be separately identified.

The interim amendments also provide that importers must be able to demonstrate their use of reasonable care in determining the *origin-conferring* manufacturer. If an entry of textile or apparel products fails to include the MID properly constructed from the name and address of the manufacturer, the port director may reject the entry or take other appropriate action (e.g., assessment of a penalty).

It is important to note that the origin-conferring manufacturer may not be the same party who actually sells the merchandise to you. Therefore, you must exercise reasonable care to ensure not only that your MID is constructed properly, but that your customs broker has the correct "manufacturer" information.

**“Efforts and courage are not enough without purpose and direction.”**

**John F. Kennedy**

### **Automated Export System Filings and Penalties**

As noted in our October issue of TradeTalk, the Census Bureau is preparing its final rulemaking for mandatory filing requirements for electronic export control filings. Final rules should be issued in the first quarter of 2006, with intention of taking effect 90 days after publication in the Federal Register. As was noted, this will call for the mandatory filing of export information through AES (Automated Export System) or through the AESDirect for all shipments where a Shipper's Export Declaration (SED) is currently required. The final rule is expected to differ from the proposed rule in a number of respects. Some of the changes will be purely terminology or procedural and others will more drastic. For example, the "SED" will now be called the "Electronic Export Information" and the FTSR will be known as the Foreign Trade Regulations recognizing that filings are important to agencies other than the Census Bureau, whose interest is purely statistical. Another change will clarify that the state of origin of a shipment will mean "where the merchandise started its journey". One of the most important changes in the final rule will be the large increase in the cost of penalties for false or delayed filing. The civil penalties may be up to \$1100 per day, up to a maximum of \$10,000 per violation, which is ten times the current penalty. Criminal penalties could include penalties up to \$10,000 per violation, imprisonment for up to five years or both. The final rule would also delegate authority to impose these penalties to the Bureau of Industry and Security of the Department of Commerce, as well as to the Department of Homeland Security agencies.

### **Import License No Longer Required**

Per the final rule published in the Federal Register on December 1, 2005, the Bureau of Industry and Security is removing the requirement to obtain an Import Certificate in support of an export or re-export license when the ultimate consignee or purchaser is a foreign government or agency of Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, or India. The requirement is being removed because of their membership in the North Atlantic Treaty Organization (NATO) and their commitment to export controls, as is reflected by their membership in multiple export control regimes, such as the Wassenaar Arrangement, The Australia Group, the Missile Technology Control Regime, and the Nuclear Suppliers Group. This requirement is being removed from India because of the actions it has taken under the U.S.-India Next Steps in Strategic Partnerships.

For further details see the December 1, 2005 Federal Register (Vol.70 No.230).

### **Byrd Amendment Appealed**

**In a significant victory for the trade community**, a compromise repeal of the Byrd amendment was included in the budget reconciliation package just passed by the House and Senate. For technical reasons, the budget measure will need to be approved again by the House before it is sent to the President. The House vote is expected to be a routine matter.

The Byrd amendment was originally passed in 2000 and stipulates that all antidumping and countervailing duties be distributed to companies who filed the antidumping and countervailing duty petitions, rather than going into the general treasury. It was ruled illegal by the World Trade Organization and provoked four US trading partners [Canada, Mexico, Japan and the EU] to impose approximately \$134 million in retaliatory tariffs.

In the compromise approved by Congress, repeal of the Byrd amendment will be delayed until October 1, 2007. This ensures that lumber, ball bearings, and chipmakers will be able to receive duties collected before that date. Despite the deferred repeal date, this is a significant accomplishment since Byrd repeal was

considered nearly impossible because of the broad support for the Byrd amendment in the Senate. Only last week, 73 Senators voted to instruct conferees to strip the repeal provision from the budget bill.



*Merry Christmas*

*Happy Kwanzaa*

*Season's Greetings*

*Joyeux Noël*

*God Jul*

*Natal Alegre*

*Happy Hanukkah*

*Feliz Navidad*

*Fröhliches Weihnachten*

*Sheng Dan Jie Kuai Le*

*Vrolijke Kerstmis*

*Natale allegro*



**Disclaimer Notice:**

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**THANK YOU FOR YOUR CONTINUED SUPPORT!**

If you have any suggestions or complaints, please call one of the individuals below at 843/577-3630 or email them as noted.

**Don H. Brown, Chairman**

**Pete Smith, President**

**Capers Barr, President**

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