

ROGERS & BROWN

# TRADE TALK

VOLUME 20, ISSUE 2      JULY 2007

## THE DOG DAYS OF SUMMER

As we move into the hot and muggy Dog Days of Summer and into an earlier and more prolonged period of political positioning for the Congressional and Presidential elections in 2008, many trade issues will either change demonstrably or get left in the political sands of time. A number of free-trade agreements have been placed on hold or summarily dismissed as unfair or unwarranted, placing many U.S. companies at a competitive disadvantage. In most cases, if these trade agreements were implemented, tariffs would be reduced or removed on many products allowing U.S. companies to become more competitive with other countries who already have these agreements in place. Other issues confronting the trade agenda are presidential negotiating authority which expired July 1st, China WTO violations and concerns over the safety of food and other products, and trade preferences. This new Congress is obviously not as friendly toward international trade as the previous one. Although there are most certainly areas of trade that are not absolutely fair, much of the recent changes clearly have the markings of protectionism driven by labor and other politically inspired special interests. China has recently become the most obvious and visible target of regulators driven by political changes. As we move forward the next several years we will likely see more anti-dumping, countervailing duty, currency legislation, intellectual property enforcement, "sweatshop labor" concerns, and other perceived unfair trade practices being brought to the forefront. Recent problems associated with Chinese tainted food products have raised the profile of goods imported from China in particular, but also on other lesser developed countries, and to some degree, rightfully so. It is highly likely that should additional products be discovered to be contaminated, increased scrutiny will spread to other imported products from China and other countries, possibly touching off retaliation on goods exported from the United States as well.

South American, Korean, and other trade agreements are also in danger of stagnating if our legislators are not properly educated on the value of trade with our friends and sometimes foes alike. As noted above, many of these trade agreements benefit American companies trying to sell their goods and compete with other countries on a fair and equitable basis. Depending on the outcome of elections in 2008, things could get considerably worse before they improve. All things are political during election cycles and government agencies are sometimes influenced by which party controls the purse strings. All of us must remain vigilant and continue to call, write, or visit our legislators to help them understand the importance and viability of much of this legislation. These issues should not be party specific, but what is fair and equitable for our economy as well as those foreign nations of the world. In certain cases, if we fail to implement certain agreements, especially in the Southeast Asian arena, China and others will step in to fill the void, much to our disadvantage. Hopefully cooler heads will prevail as many of these trade agreements move forward, but there will no doubt be contentious moments and concessions on both sides of the aisle as the debates heat up.



### INSIDE THIS ISSUE:

LAWSUITS CHALLENGE CUSTOMS DUTY RATE DIFFERENCES	2
ILWU, PMA CONTINUE NEGOTIATIONS	2
NCBFAA	3
NEW COURT DECISION RAFFIRMS, EXPANDS SCOPE OF "FESTIVE ARTICLES	3
CHINA SLASHES EXPORT RATES	4
PEAK SEASON EXPECTED	4
EXPORT LICENSING CHANGES BECOME FINAL	5
CANADA'S "NONRESIDENT IMPORTER" PROGRAM HELPS U.S.	5
NEW LETTER OF CREDIT RULES SIMPLIFY PROCEDURES	6
FEDERAL GOVERNMENT DEALYS NEW PASSPORT REQUIREMENTS	7

## LAWSUITS CHALLENGE CUSTOMS DUTY RATE DIFFERENCES

For many years everyone seemingly accepted the fact that duty rates differed for men's versus women's clothes. Starting in January of this year, Totes-Isotoner filed a complaint with the U.S. Court of International Trade claiming that because of gender bias in the tariff rates on gloves, they had paid too much in duties and wanted a refund. In May, Target Corporation followed suit also filing a complaint with the U.S. Court of International Trade claiming gender bias on a broader range of goods, opening the flood-gates for other companies to follow suit. At stake are refunds amounting to more than \$300 million dollars that, should the importers prevail, would be required to be refunded. Although duty rates are different in many cases based on male versus female clothing, they are described exactly the same way under the tariff schedule. For instance, the tariff rate for men's and boy's swimwear is 27.8 percent; for women and girls, 11.8 percent. The contention of those filing the complaints is that the only difference is the sex of the intended wearer. Although the difference in rates for the above commodity is fairly large, generally the differences are somewhat more modest. Even though no one seems to understand why there are different rates for these items, speculation is that over the years special interest lobbying has caused rates to be changed to protect one segment of a particular industry. As more and more companies join in the complaint, experts believe the government will be hard-pressed to justify this discriminatory rate structure.

**I hear it said that  
West Berlin is  
militarily  
untenable – and so  
was Bastogne, and  
so, in fact was  
Stalingrad. Any  
danger spot is  
tenable if men –  
brave men – will  
make it so.**

**John F. Kennedy**

## ILWU, PMA CONTINUE NEGOTIATIONS

As mentioned in our April issue of TradeTalk, the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA) (representing management) have indicated that they will begin contract negotiations by next February in order to convince shippers that they have no reason to divert their shipments from the West Coast. The 10-day lockout during the 2002 negotiations was a primary reason that accelerated the trend toward all-water services from Asia to East and Gulf Ports. With contract negotiations starting in February it is hoped that a contract can be finalized well before service contracts between importers and carriers take effect on May 1<sup>st</sup> of 2008. It appears that there are far fewer contentious issues with the upcoming contract as there were in 2002, with maintenance of benefits appearing to be a top objective for unions. Employers will likely be seeking new work shifts that reflect the realities of today's trans-Pacific trade as well as extended gate hours under the Pier Pass system in Southern California and rapid growth of on-dock rail volume requires a work day of two continuous shifts. It is believed that both will agree to another six-year contract.

Complicating matters somewhat is the fact that the ILWU clerical workers have not yet settled their contract. Negotiations resumed this past week covering the several hundred clerical workers at marine terminals in the Port of Los Angeles and Long Beach. Although progress has been slow and disappointing according to PMA lead negotiator Steve Berry, both sides are hopeful to reach an agreement soon. Even though their contract expired July 1<sup>st</sup>, employees have stayed on the job while negotiations continue. Although contract negotiations are separate from the longshoremen and warehouse workers, the ILWU has indicated that if there is a strike by the clerical workers the terminal workers would honor the picket lines effectively closing the nation's busiest container port complex.

## NCBFAA JOINS IMPORT ASSOCIATIONS OPPOSED TO 100% SCANNING

The National Customs Brokers and Freight Forwarder's Association (NCBFAA) recently added their voices opposing 100% scanning of all containers imported into the United States. As this publication has noted on a number of occasions, not only would this tremendously strain our waterfront resources, it simply has not been well thought out. The coalition has expressed some support for the Senate versus the House approach which, according to them, would allow the Department of Homeland

Security to move forward with those elements of the current pilot programs that prove to be feasible and how increased scanning will be integrated into the current multi-layered risk-based approach currently utilized by our government and trading partners. A letter was written to the Senate Homeland Security Chairman Joseph Lieberman (D) and Ranking Member Susan Collins (R-ME) pointing out the many flaws and omissions in the House proposal including: failure

to address what will be done with the scanning data; that none of the expanded overseas inspections can occur without the cooperation and consent of host governments; what will happen if certain governments/countries refuse or cannot afford to implement programs; and who is going to pay for the personnel or operating costs of the systems. The letter also noted that it will be difficult to convince other countries of the world to implement these programs when the United

States does not scan any containers being exported from our country.

## NEW COURT DECISION REAFFIRMS, EXPANDS SCOPE OF "FESTIVE ARTICLES"

The Court of International Trade (CIT) recently reaffirmed and to some degree expanded the scope of "Festive Article" tariff provisions offering prospects of duty refunds for a wide range of articles. Importers of a wide range of utilitarian items with holiday or special occasion themes may be able to obtain duty refunds following a June 11<sup>th</sup> ruling by the CIT in the case of Wilton Industries Inc. v. U.S. The new ruling expands the types and themes of utilitarian products that may be eligible for duty-free provisions of the

Harmonized Tariff Schedule as well as reaffirming its landmark rulings in *Midwest of Cannon Falls* and *Park B. Smith*. From a practical standpoint, this means that importers can continue to challenge U.S. Customs and Border Protection's decisions not to classify utilitarian articles as festive articles, although they will likely have to pursue such matters in court. Even though the 2007 HTSUS, which took effect February 3<sup>rd</sup>, includes a new note to chapter 95 that specifically prohibits the classification of utilitarian articles

thereunder, importers may be able to obtain duty-free treatment for such items under a "festive article" provision even after that date. For additional information related to this new decision and how you might take advantage of this change, contact Sandra Horan, Director of Imports at 864-918-2651 or Beth Morris, Director of Drawback & Compliance or Floyd Sirico, Corporate Entry Manager at 843-577-3630. They can assist you in determining if your "festive article" goods might qualify for a duty refund.

**Surround yourself  
with the best  
people you can  
find, delegate  
authority, and  
don't interfere as  
long as the policy  
you've decided  
upon is being  
carried out.**

**Ronald Reagan**

## CHINA SLASHES EXPORT REBATES

Due to the increased scrutiny of China's trade surplus as well as numerous other issues related to trading with China, they recently announced a series of measures designed to appease U.S. congressional leaders and regulators. By adjusting tax rebates on more than 2800 products, Beijing is eliminating rebates on 553 products that are deemed to be "resource and energy-intensive and highly polluting," such as fertilizers, leather, and cement. In addition it is reducing rebates on 2,268 products that "easily cause trade frictions" including toys, apparel, furniture, paper, and plastics. The rebates on those products were lowered on July 1<sup>st</sup> to five and 11 percent.

In another move, Beijing is

temporarily lowering import duties on a variety of goods. The tariffs on imports such as coal and fuel oil will not exceed 3 percent and the tariff on components for television sets, refrigerators, and other products will be lowered to between two and 6 percent from rates higher than 10 percent. In addition, duties on home appliances, kitchenware, and construction material, will be reduced to between six and 17 percent.

Thirdly, China announced it will impose five to 10 percent tariffs on steel products and 142 low-end resource products. Although these proposed changes had been garnered from postings on Chinese government websites, they had not yet

been translated into English. With China's trade surplus soaring, skeptics believe this is too little too late to have an impact on Congress's inquiries and investigations. Few details have been released and China has been known to post similar notices but never implement them. Critics say the real goal of Chinese policymakers is to discourage any punitive measure that some member of Congress may want to impose on Chinese imports. If it is expected to satisfy certain members of Congress, China will need to be much more aggressive about revaluing its currency, the yuan. According to some skeptics at least the changes are in the right direction.

**It is neither wealth  
nor splendor; but  
tranquility and  
occupation which  
give you  
happiness.**

**Thomas Jefferson**

## PEAK SEASON EXPECTED TO BE CALM

With weaker growth so far in 2007, expectations for a tumultuous "peak season" are low. According to all tracking services and carriers themselves, it appears that container ports in the U.S. should remain relatively quiet this year even though there has been growth and expectations are for record months from August through October. Many factors have played a role in this year's peak season being milder than normal. Many shippers have shipped earlier in order to

avoid the rush, some have shifted to other ports, some have converted to all water services to the East Coast, ports systems and infrastructure have been refined and improved allowing for containers to be moved out to areas that can handle them more efficiently, others have extended gate hours, and generally all parties have made a concerted effort to become more efficient at clearing and moving freight. Much more will need to be done to

accommodate increasing volumes, but it appears that there is a desire and willingness in the maritime community to make this a reality.



## EXPORT LICENSING CHANGES BECOME FINAL

The Bureau of Industry and Security (BIS) recently finalized Export Administration Regulations (EAR) to revise and clarify U.S. licensing requirements and licensing policy on exports and re-exports of items to the People's Republic of China (PRC). The final rule establishes a control, based on knowledge of a "military end-use" on exports and re-exports to the PRC of certain items on the Commerce Control List (CCL) that otherwise do not require a license to the PRC. It also includes a revision to the license application review policy for items destined for the PRC that are controlled on the CCL for reasons of national security, and revises the license review policy for items controlled for reasons of chemical and biological weapons proliferation, nuclear nonproliferation, and missile technology for export to the PRC. There are a number of other provisions in this bill of which the full federal register notice can be found on our website, [www.rogers-brown.com](http://www.rogers-brown.com) in the News Center section.

Along these same lines, the Department of Justice (DOJ) has been focusing on exporters recently with increased enforcement activity. In a recent case against ITT Corporation, whose ITT NV division is a leading manufacturer of high-tech night vision equipment, the company just settled for a \$100 million plea agreement with the DOJ calling for fines, forfeitures, and other payouts. In addition, this division is prohibited from participating in exporting defense articles or furnishing defense services for three years. In two additional cases, one in Alabama and one in South Carolina, similar violations of the Arms Export Control Act (AECA) and other laws restricting the export of goods and technology occurred. The interesting facts of these enforcement actions was that "technology" can include any type of information, drawings or data related to the development, production or use of export controlled articles, and in these instances, two of them involved unauthorized transfer of drawings and design data to foreign manufacturers. Officers and management of companies exporting such goods should review their processes to make certain that they are in compliance with all existing export regulations, especially those related to sensitive goods and products that might be used for military purposes. Those companies producing such products, especially offshore, should make certain there are no restrictions in transferring sensitive data and information to restricted countries or suppliers in those countries. Special care should be taken to properly prepare export license applications and Technical Assistance Agreements to obtain needed authorization. Individuals in companies need to be aware that they – employees, executives, and owner s– are subject to prosecution to include fines and incarceration in such cases.

---

## CANADA'S "NONRESIDENT IMPORTER" PROGRAM HELPS U.S.

U.S. exporters have been elated over the discovery of the Canadian "Nonresident Importer" program developed by the Canada Border Services Agency. As a nonresident importer, an exporter can be the importer of record for its own goods entering Canada from the U.S., without having a presence in Canada. This program has allowed exporters to more effectively compete for local market share by making it as easy for Canadian businesses to buy from a U.S. supplier as from Canadian suppliers by including logistics costs, such as duties and taxes, customs clearance and product movement, in the price of the product and assuming responsibility for shipping directly to Canadian customers.

Also Canadian customers are demanding that their U.S. suppliers ship to them delivery-duties paid which shifts to the U.S. supplier all the import charges and costs involved in delivering the shipment to the buyer's door. This also allows Canadian customers to immediately compare the U.S. exporter's price in Canada with the price of similar goods from local suppliers. This has allowed many U.S. companies to close their Canadian operations allowing them to become more competitive with Canadian companies as well as provide better customer service.

The first step in becoming a nonresident importer is to set up a corporate account with the Canada Border Services Agency by applying for a business number. The Request for a Business Number (Form RCI) can be obtained from any Canada Border Services Agency office or on the Publications and Forms page of the agency's website at <http://cbsa-asfc.gc.ca>.

## NEW LETTER OF CREDIT RULES SIMPLIFY PROCEDURES

Letter of credit guidelines as outlined by the International Chamber of Commerce are officially known as the Uniform Customs and Practices for Documentary Credits and the first version was adopted more than 70 years ago. The new rules, which went into effect July 12, 2007, should simplify rules for exporters and as such, exporters will be less likely to face risks or delays related to minor discrepancies in documents. The new rules, known as UCP 600, have significant implications for exporters, importers, freight forwarders, bankers and attorneys because they will make it easier for parties to use a letter of credit. The old version of rules, UCP 500, were more complex and their emphasis on detail, much of which were minor issues, created headaches for many exporters, importers, forwarders, and related parties. The new rules were developed to place the responsibility on the issuing bank to be clear and precise in their letter of credit requirements. Despite the trend for larger companies to demand open account terms, many smaller and mid-sized importers and exporters still utilize letters of credit to protect them from financial loss. Some of the more important and notable

changes are:

- Foreign addresses, phone numbers and fax number no longer need to be perfect in a letter of credit except for the consignee and notify fields of a transport document.
- Article 17 broadens the definition of an original document which makes it easier for the seller to provide original documents.
- New definitions and interpretations have been added to clarify the meaning of ambiguous terms which were not defined in UCP 500.
- Data in documents presented under a letter of credit need not be identical to other data in the documents, although two sets of data must not be in conflict. The exception to this is the description in the commercial invoice must agree with the credit per Article 18c.
- The revised transportation articles individually define transshipment relative to the mode of transportation and widely permit transshipment even when it is prohibited in the letter of credit because transshipments as a matter of trade occur frequently and must be dealt with.
- The phrase “reasonable time” for acceptance or refusal of documents has been replaced by a maximum period of five banking days.
- The revision also redefines the word negotiation, which now means purchase of documents.

There are many other changes to the guidelines, and generally speaking, these new rules make letters of credit much easier for all parties to deal with and interpret. The Uniform Customs and Practices for Documentary Credits, 2007 Revision, UCP 600 may be purchased from

ICC Books USA, 1212 Avenue of the Americas, 18<sup>th</sup> Floor, New York, N.Y. 10036, Tel: 212-703-5066 or you can email: [iccbooks@uscib.org](mailto:iccbooks@uscib.org). Online purchases can be made at [www.iccbooksusa.com](http://www.iccbooksusa.com).

**Kindness is the  
language  
which the deaf  
can hear and  
the blind can  
see.**

**Mark Twain**

## FEDERAL GOVERNMENT DELAYS NEW PASSPORT REQUIREMENTS

Secretary Michael Chertoff of the Department of Homeland Security (DHS) announced on June 20<sup>th</sup> that he would phase in the new passport requirements for U.S. citizens traveling by land or sea to North American countries beginning January 31, 2008. Originally scheduled to begin as of January 23, 2007, the Western Hemisphere Travel Initiative (WHTI) was pushed back because DHS was unable to keep up with the surge in demand for passports. As a result DHS will permit U.S. citizens who can produce proof of application for the passport and other government-issued identification, to travel to any of these North American destinations (Canada, the Caribbean,

Bermuda, or Mexico). U.S. citizens are already required to present a passport for travel to any other foreign destination. Chertoff has now clarified that the second stage of the WHTI passport requirement will be phased in. Beginning January 31, 2008, DHS will initiate identification requirements at land and seaports in stages. At the Canadian border, it will no longer suffice for U.S. and Canadian citizens to make an oral declaration of citizenship. Instead, they will have to present either a WHTI-compliant document or a government-issued photo I.D., such as a driver's license, plus proof of citizenship, such as a birth certificate. DHS also proposes

to begin alternative procedures for U.S. and Canadian children, whereby children ages 15 and younger would be required to present certified copies of their birth certificates, as would groups of U.S. and Canadian children 16 through 18 that may be traveling in school groups, youth athletics, or other group activities.

At a later date to be determined, DHS and the State Department will implement the full requirements of the land and sea phase of WHTI. The full implementation will depend on such factors as the ability of U.S. and Canadian authorities to issue the needed passports or other WHTI-compliant documents. A Federal Register notice will be

published at least 60 days prior to implementing the rule. With a backlog of close to 3 million Americans needing passports, the State Department has asked for additional help in cleaning up this mess. The State Department has even issued an apology acknowledging they had failed to anticipate the flood of passport applications this year that have resulted in long delays and disruption of summer travel plans for many.



We are a certified and validated  
member of Customs-Trade  
Partnership Against Terrorism.

## ROGERS & BROWN

Corporate Office  
P.O. Box 20160  
Charleston, SC 29413-0160  
Phone: 843.577.3630

If you no longer wish to receive Special Notices from Rogers & Brown, please send an email to [Christina\\_Hughes@rogers-brown.com](mailto:Christina_Hughes@rogers-brown.com) and type "UNSUBSCRIBE" in the subject line of your email.

CHECK OUT OUR WEBSITE!

[WWW.ROGERS-BROWN.COM](http://WWW.ROGERS-BROWN.COM)



### **Ken Bolin - Director of Sales**

Since joining Rogers & Brown in 2002, Ken has quickly become one of the most successful sales managers in our company's history. His accomplishments can be attributed to his extensive sales experience in the textile and insurance industries. Mr. Bolin was previously employed by TNS Mills, Inc. from 1987 to 2002. As general manager of sales from 1997 to 2002, Ken managed all aspects of the department and helped develop and maintain client bases in Canada, Mexico, and Central and South America.

Located in our Greer operations office, Ken earned a B.S. degree in Business Administration from Wofford College in Spartanburg, SC. He is married, has two children and resides in Cowpens, SC.



**Ships, trains, planes, nor trucks move product. People do. People who show up to work each day with sleeves rolled up. Proud employees dedicated to the success of their clients. Loyal folks who understand that time is money, assembly lines cannot stop, cars need tires.**

**The sleep we sacrifice puts our clients at ease. The solutions we invent help streamline business and move cargo faster. Global networks we build make storms, port congestion and tight security restrictions small hurdles. We are Rogers & Brown. Our tireless efforts bring certainty to an industry where much is left to chance.**

**Our clients see us as more than a dedicated partner. They see us as heroes. Everyday**

### **Disclaimer Notice:**

Rogers & Brown Custom Brokers, Inc. provides this information as a matter of convenience and as such does not necessarily warrant the accuracy of the information contained herein. This information should not be construed as legal or professional advice. Before you act on any information provided in this newsletter, you should seek professional advice regarding your specific situation.