

# LIVINGSTON GLOBAL PERSPECTIVES

Global trade requirements growing more similar	2
Global trade trends update	3
Understanding U.S. Anti-Dumping and Countervailing Duty	5
In the zone: A look at Foreign Trade Zones in the U.S. and Canada – Part 2	7
Answers to frequently asked questions about U.S. trade quotas	9
Merchandise Processing Fees (MPF): What importers need to know	11
GEP Ex. 1: Export of Goods for Special and Personal Use Permit – it still exists?	13
The changing face of Special Imports Measures Act (SIMA) regulations in Canada	15
Singapore – Our feature country	17
USA-Canada Wood Packaging Material exemption still exists, but for how long?	18
List of some of the Trade Agreements in negotiation	20
Public holidays	22

# GLOBAL TRADE REQUIREMENTS GROWING MORE SIMILAR

We're happy to share the latest issue of Livingston Global Perspectives with you. Here you'll find a collection of pressing and relevant regulatory and compliance topics.

As practitioners in the global trade arena, how many times have we heard "our country's requirements are different" or "it is not possible to anticipate global requirements for our industry?" The articles in this quarter's Global Perspectives demonstrate how similar import and export requirements are becoming worldwide.

One only has to look to our "Global Trends" article to see the commitment of WTO and WCO member nations to simplify and modernize trade. They are driving change through the establishment of common standards, including the security of supply chains, multi-lateral trade agreements, and shared data sets being used in single-window initiatives. Our country specific articles covering ADD/CVD and SIMA are further evidence of how we may act locally to protect domestic interests, but still have great similarities across borders.

We hope these articles give you additional insight to activities that may impact your global trade business and look forward to hearing from you on specific topics you may want a global perspective on in future editions. Please send us an e-mail to [LivingstonGlobalPerspectives@Livingstonintl.com](mailto:LivingstonGlobalPerspectives@Livingstonintl.com) to let us know what you think, and help us improve our future publications.

If you enjoyed the content in this edition of the Livingston Global Perspectives and would like to subscribe to additional trade news, please visit [www.livingstonintl.com/subscribe](http://www.livingstonintl.com/subscribe) to view our subscription offers.

**Susan Pomerantz**, Senior Director, Global Governance and Compliance

**Candace Sider**, Vice President, Regulatory Affairs Canada

**Travis Hull**, Director, Business Services

**Susan Pomerantz**

Senior Director, Global Governance and Compliance



# GLOBAL TRADE TRENDS UPDATE

By **Philip Sutter**, U.S. Global Trade Management Governance

Understanding the importance of global trade trends from their evolution to their implementation, highlights why companies in the supply chain must keep up. The global goal is to modernize and simplify customs data elements and formats. A core part of this will be to go to a “single-window” that covers all border-crossing requirements and make the idea of “a good export equals a good import” come to reality. This article includes recommendation on the steps companies should be taking to keep up with these trends.

The global trade trend is for governments to move toward the coalescing of their trade programs, processes, and procedures. This is an evolutionary process that began after World War II with the General Agreement on Tariffs and Trade (GATT), continued with the World Customs Organization (WCO) Safe and Fast Environment (SAFE) Framework of Security Standard<sup>1</sup>, moving forward at present with the World Trade Organization (WTO) Trade Facilitation Agreement (TFA), large free trade agreement (FTA) trading blocs, and many other programs and organizations to promote supply-chain efficiency, compliance, and cost avoidance. Companies in the international supply-chain must find ways to keep up.

The concept of a “trusted trader” is the ultimate vision of a global supply chain. A trusted trader is one that self-monitors its security and compliance activities as a force-multiplier for the governing authorities. That trader may receive benefits such as expedited border clearance and other perks. This risk-based approach allows the authority to concentrate available resources on the rest of the population. It began with Customs-Trade Partnership Against Terrorism (C-TPAT) in the United States (US) and progressed to other regions, for example the European Union (EU) Authorized Economic Operator Program. The WCO provided SAFE to give consistent guidance to other security aspiring countries to follow. Despite SAFE, each program was siloed. Through mutual recognition arrangements, the various governmental parties are coming together toward a true common set of requirements and recognition equivalence.

Going to the next logical step, the idea goes beyond security to include compliance. The global goal, therefore, is to modernize and simplify customs data elements and formats. A core part of this will be to go to a “single-window” that covers all border-crossing requirements and make the idea of “a good export equals a good import” come to reality. Although the basic elements of a supply-chain are common, the data requirements, other government agency admissibility regulations, and formats vary significantly between countries. The WCO supports the effort to bring commonality between its members by maintaining the WCO Data Model<sup>2</sup>. The WCO is promoting and tracking its adoption among members<sup>3</sup>.

As United States’ traders know, getting to data conformity takes time and resources. The Automated Commercial Environment project is just now getting closer to reality after two decades and millions of dollars. Other countries such as Mexico have implemented single-windows successfully. Canada is launching its Single-Window Initiative. The EU is now moving ahead with its Union Customs Code, it includes a single-window for the EU, and it is based on the WCO Data Model. Globally, the WTO TFA<sup>4</sup> is nearing ratification. The TFA promotes the single-window idea and encourages the modernization and capacity building of this model across all members including the developing countries.

From a free trade perspective, what began with the GATT took further shape with the most favored nation concept. Notwithstanding programs like the Information Technology Agreement and Environmental Goods Agreement, WTO-wide duty reductions have lost momentum. The trend

shifted to bi-lateral FTAs and several multi-lateral agreements like the North American Free Trade Agreement, Association of South East Nations, and Pacific Alliance. At present, there are several large multi-lateral trading blocs (Trans-Pacific Partnership, Transatlantic Trade Investment Partnership, and Regional Comprehensive Economic Partnership) in negotiation or up for ratification. With the various overlaps of nearly 300 FTAs and the large trading blocs, it is a complex web of opportunity for international traders. The challenge is to develop duty avoidance and sourcing strategies that best take advantage of these changes ahead of the competition.

Technology plays a big role in each of the foregoing topics. New systems and processes are a necessity to facilitate these changes. But, it is costly, not only for the governments but also for the international businesses that must change databases and interfaces. Since, these paradigm shifting changes rarely come in one phase, it is difficult for the trade to keep up, let alone become a first or early adopter. In the case of FTAs, it requires significant effort to collect and maintain content and expertise to program the unique rules for the extensive list of FTAs that may apply to a company. Companies may find it difficult to fund technology to support such slow moving, yet sometimes politically abrupt changes. What actions can global companies take to deal with the evolution of customs and trade?

- **Keep Informed** – Awareness is critical to understand and prepare for new programs and regulations that impact the supply-chain and business plans. This includes both the awareness of trade and regulatory changes, but also internal company programs that may impact or change a border crossing transaction in some way.
- **Conduct Training** – Compliance and supply-chain efficiency are people intensive. It is important that analysts and decision makers alike understand the impact of global trade trends and how changes will impact their company. An informed executive will be able to understand the risks and take appropriate action.

- **Participate in Pilot Programs** – The launch of ACE necessitated the participation of the trade community in pilots. For example, the significant changes due to the electronic requirements of participating government agencies challenged brokers and importers. Many companies worked together in cooperation with CBP to enable ACE to get as far as it has today. Even in China, there are pilot programs to promote their implementation of the Collective Duty Settlement Program and Customs Clearance with Paperless Automatic Import Licenses. Those companies that are able to participate are better positioned for a smoother transition.
- **Improve Product Databases/ERP Systems** – the onset of single-window programs and advanced customs entry systems have seen many companies begin to design or amend their product databases and systems to accommodate the flow of the various information required to make a timely entry. Compliance departments should watch for internal system-upgrade opportunities to add customs data to the plan.
- **Construct Free Trade Agreement Solutions** – As happened when NAFTA came into force, companies are planning their strategies for being able to take advantage of new FTAs like TPP and TTIP. Uncertainty of the details during negotiation and unclear ratification dates make it difficult to have programming lead time, but companies are building these programs as contingencies into their business plans.
- **Collaborate with Supply-Chain Partners** – Global enterprises; producers, buyers, or intermediate supply-chain partners need to work together for their mutual best interests. This could be through joint projects, trade management engagements, consulting, or simply sharing international trade techniques and best practices. It may not be wise to go it alone. Connect with global trade management business partners and work together to find mutually beneficial solutions. ▸

1. <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/2B9F7D493314432BA42BC8498D3B73CB.ashx>

2. [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/pf\\_tools\\_datamodel.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/pf_tools_datamodel.aspx)

3. [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/WCO/Public/Global/PDF/Topics/Facilitation/Instruments%20and%20Tools/Tools/Data%20Model/Globla%20adoption%20of%20the%20WCO%20DATA%20MODEL\\_EN.ashx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/WCO/Public/Global/PDF/Topics/Facilitation/Instruments%20and%20Tools/Tools/Data%20Model/Globla%20adoption%20of%20the%20WCO%20DATA%20MODEL_EN.ashx)

4. [https://www.wto.org/english/news\\_e/news16\\_e/fac\\_10may16\\_e.htm](https://www.wto.org/english/news_e/news16_e/fac_10may16_e.htm)

# UNDERSTANDING U.S. ANTI-DUMPING AND COUNTERVAILING DUTY

By *Maurice Deslauriers*, U.S. Regulatory Affairs

Similar to other countries, the U.S. also has antidumping and countervailing regulations. While each country has its own regulations, the U.S. has its own specific set of rules which involve both the Department of Commerce (DOC) and the United States International Trade Commission (ITC). “Dumping” occurs when imported merchandise is sold in the U.S. at less than the normal value of the merchandise or at a price that is below the foreign company’s cost of production. The difference between the price or cost in the foreign market and the price in the U.S. market is called the dumping margin.

You have received a telephone call, or an e-mail from your people or broker telling you that the product you have imported into the U.S. for years without problems or issues may be subject to an “antidumping” duty; the mention was even made of a “countervailing” duty. What happened here?

It’s important to realize that this question didn’t arise due to any action on the part of U.S. Customs and Border Protection (CBP). CBP is not the Agency who determines either measure.

If a U.S. industry believes that it’s being injured by unfair competition through dumping or subsidization of a foreign product, it may request the imposition of antidumping or countervailing duties by filing a petition with both the Department of Commerce (DOC) and the United States International Trade Commission (ITC).

Petitions are filed simultaneously with the two departments; both play separate but dependent roles during the course of the investigation. The ITC is responsible for determining whether a domestic industry is materially injured or threatened with material injury as a result of the individual and cumulated impact of the allegedly dumped imports. To initiate an investigation, the Department of Commerce must determine that a petition is filed by an interested party and has the support of the industry producing the domestic like product in the United States (“industry support”).

“Dumping” occurs when imported merchandise is sold in the U.S. at less than the normal value of the merchandise or at a price that is below the foreign company’s cost of production. The difference between the price or cost in the foreign market and the price in the U.S. market is called the dumping margin.

Imports of foreign merchandise are liable for special dumping duties only after two things occur:

- 1.** A determination is made by the Assistant Secretary of Commerce for Enforcement and Compliance that there are, or are likely to be, U.S. sales of the merchandise subject to the investigation at below fair value, and
- 2.** A determination is made by the ITC that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

The Department of Commerce (DOC) compares the adjusted prices sold in the U.S. to the adjusted price of the foreign like product in the home or third country market or to the constructed value of the subject merchandise to calculate the dumping margin.

It (the DOC) has the sole authority to initiate or not initiate an investigation, and analyze sales and costs from the perspective period of investigation to determine whether dumping occurred.

The specific detail of any order that emanates from an investigation is called a “Scope”.

The “scope of the investigation” is the detailed description of the imported merchandise that is being unfairly dumped or subsidized and injuring the U.S. industry.

This description should include the technical and physical characteristics of the merchandise and the current U.S. tariff classification number(s).

The scope description should be an accurate reflection of the product for which the domestic industry is seeking relief, but should not be defined so narrowly that obvious circumvention issues could arise in the future should an antidumping or countervailing duty order be imposed.

1. The scope determines the price and cost information the Department of Commerce collects in its dumping analysis. In addition, the scope defines the exact products to which any antidumping or countervailing duties may be applied.
2. Following the initiation of an investigation, the Department of Commerce designates a period for interested parties to raise issues regarding the scope. Usually, this comment period is the twenty day period following publication of the Notice of Initiation in the Federal Register.

### **What is a Countervailable Subsidy?**

Countervailing Duty (CVD) proceedings determine whether foreign governments are unfairly subsidizing their producers/exporters.

Foreign governments subsidize industries when they provide financial assistance to benefit the production, manufacture or exportation of goods. Subsidies can take many forms, such as direct cash payments, credits against taxes, and loans at terms that do not reflect market conditions.

The statute and regulations establish standards for determining when a subsidy has been conferred. The amount of subsidies the foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or “countervailed,” through higher import duty.

In closing, please don’t think that CBP is simply “taking orders” from the Department of Commerce in these cases, for CBP has created a new Task Force, born as a result of the Trade Facilitation and Trade Enforcement Act of 2015 (the “Trade Enforcement Act”), which became law in February of this year. The Trade Enforcement Act includes several provisions that elevate Antidumping and Countervailing duty enforcement by requiring CBP to investigate allegations of Antidumping or Countervailing order evasion within strict deadlines, and developing and acting on duty evasion risk assessments regarding cargo destined for the United States.

Both of these duty types have become paramount, and deserve your immediate and full attention. ↴

# IN THE ZONE: A LOOK AT FOREIGN TRADE ZONES IN THE U.S AND CANADA

## Part 2

By **John Moccia**, *Canada Regulatory Affairs*

This article is part two of an article we printed in our previous edition of the Global perspectives. Part one covered key differences between the United States and Canada. Part two, takes a closer look into how Canada currently manages its Foreign Trade Zone policy.

In our previous issue of Global Perspectives, I explored the concept of the Foreign Trade Zone and reviewed some of the key differences between the United States and Canada. In Part 2, I take an even closer look into how Canada currently manages its Foreign Trade Zone policy.

In this new era of globalization and international competition, many countries seek to develop policies and strategies as a means towards establishing a strong global competitive framework. As discussed in Part 1, one such strategy many countries have embraced is the use of foreign trade zones (FTZs). In general, a FTZ refers to a specific location within a country that is officially designated for the deferral of duties and taxes on imported goods under certain conditions. In Canada, the approach towards FTZs differs from the site-specific model to one, which is geographically flexible and national in scope. In essence, Canada as a whole can be viewed as a foreign trade zone. While on the surface, this may sound simplistic and appealing, as is often the case the devil remains in the details. Essentially, Canada has opted to implement FTZ like programs, which allows importers and exporters to select the program that best suits their particular needs.

### **The Duty Deferral Program (DDP)**

The DDP is Canada's main FTZ-type program that can postpone or refund duties and taxes. The DDP is made up of three components: Duties Relief Program, Drawback Program and the Customs Bonded Warehouse Program.

- **Duties Relief Program**

This program provides relief on duties paid on imports that are stored, processed or used to manufacturer other

products, as long as they eventually export 70% of the goods. However, this program does not provide relief of the GST/HST.

- **Drawback Program**

This program allows for the refund of duties paid on imported goods that are subsequently exported. Eligible goods include goods in the same condition in which they were imported, or if they are used in the manufacturer of other goods that are exported. A claim for drawback may be filed within four years of the date of importation.

Note: Article 303 of NAFTA places limits on the amount of custom duties and anti-dumping and countervailing duties refundable by way of drawback or deferrable under the above Duty Deferral Programs.

### **Customs Bonded Warehouse Program**

A customs bonded warehouse is a storage facility that a company operates under the authority of the Canada Border Services Agency (CBSA). The program allows for deferral of duties and taxes until the goods enter the Canadian marketplace. Allowable activities include marking, labelling, storing, testing, inspecting, packing and so forth. In addition to the above programs, Canada has two other programs specifically related to the relief of the Goods and Services Tax / Harmonized Sales Tax (GST/HST).

### **The Exporters of Processing Services Program**

The Exporters of Processing Services Program (EOPS) exempts participants from the GST/HST on imports of goods owned by non-residents. Goods may be imported by

manufacturing service companies for processing, distribution or storage and are subsequently exported.

### **The Export Distribution Centre Program**

The Export Distribution Centre Program (EDCP) is intended to benefit export-oriented businesses that import goods and/or acquire goods in Canada, process them to add limited value and then export them. The “limited value” criterion is a key factor here, since the EDCP is not intended for companies that manufacture or produce new products for export.

Unfortunately, the limitations of this program are significant, for example; the total value added through processing cannot exceed 20 percent. Likewise, 90 percent of the revenue generated by the participating company must come from export sales.

### **Canada’s Foreign Trade Zone Points**

Recently, the Government of Canada has begun to establish Foreign Trade Zone Points across the country whose main purpose is to provide businesses with a single-point of access to information on Canada’s tax and tariff trade-related policies and programs. There are currently six FTZ Points in Canada: Edmonton (AB), Calgary (AB), Winnipeg (MB), Niagara (ON), Halifax (NS) and Cape Breton Regional Municipality (NS).

As businesses around the globe grapple with the ever-increasing challenges of moving goods and services between countries, the concept of the Foreign Trade Zone remains a viable and fundamental option for any organization to consider. ↴



# ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT U.S. TRADE QUOTAS

By *Karen Derry*, U.S. Regulatory Affairs

A quota is a government-imposed trade restriction that limits the number, or in certain cases, the value of goods and services that can be imported or exported during a particular time period. Quotas are used in international trade to help regulate the volume of trade between countries. The following article addresses common questions about quotas when importing into the USA.

## What are import quotas?

Import quotas regulate the amount of a commodity that may be imported into the United States during a specific period of time. They may be established by legislation, Presidential Proclamation or Executive Orders and be global or specific to designated foreign countries.

## Who administers import quotas?

U.S. Customs and Border Protection (CBP) administers the majority of import quotas listed here, but may not change or modify any quota. Other U.S. government agencies determine quota and limits. See commodities administered by other agencies here.

## What types of quotas does CBP administer?

- **Tariff-rate quotas (TRQ)** permit a specified quantity of merchandise to enter at a reduced duty rate during a specific period. A U.S. import permit, a foreign government export permit or certificate of quota eligibility (CQE) may be required. You can still import quantities in excess of the TRQ, but at a higher duty rate.
- **Tariff Preference Levels (TPL)** permit eligible textile and apparel goods to enter at a reduced duty rate under certain free trade agreements or other special trade legislation. A foreign government export permit, CQE or VISA is required. CBP administers these restraints like TRQs, allowing quantities imported in excess of the TPL, but at a higher duty rate.
- **Absolute quotas** permit a strictly limited quantity of specified merchandise to enter the country during

specified periods. Once the quantity is reached, no further entries are permitted until the next quota period opens. Currently there are no absolute quotas.

## How are entries presented by CBP?

Entries are presented simultaneously across the U.S. so all importers have an equal opportunity to enter at the reduced duty rate. When the amount entered exceeds the quota limit, CBP must allot quota at a prorated amount to each entry.

## When are opening days?

Opening days vary by commodity as follows:

- **January 1:** animal feed, beef, brooms, butter, dairy products, cheese, chocolate, ice cream, infant formula, milk and cream, most TPL, mandarins, olives, tuna
- **April 1:** peanuts
- **September 13:** tobacco
- **October 1:** sugar, mixed condiments, mixes/dough, cocoa powder, sugar blends

Note: specialty sugar has an initial global opening in October with various tranches throughout the year reserved for organic specialty sugar.

## How quickly do quotas fill?

Some quotas are known to historically fill each year upon opening, specifically raw, refined and specialty sugar, dairy products and tuna. Quick filling quotas that usually fill within the first few months of opening include Canadian cheddar cheese, animal feed, sugar blends, mixed condiments/seasonings and mandarins.

If a quota does not fill on opening day, it is filled on a 'first come, first serve' basis, in order of when presented to CBP. Once a quota reaches a threshold level (generally 95 percent) it is put on hold so the remaining quota may be allocated fairly by CBP.

### **Where can we check to status of a quota?**

CBP maintains lists where you may check the status of a quota:

- TPL Threshold to Fill List
- Commodity Graph Reports
- Historical TPL Fill Lists and Year End Reports

### **What happens when goods are entered after the TRQ has been filled?**

Goods entered at the over TRQ rate may be subject to Additional Agricultural Safeguards, where for certain countries of origin the duty rate may be increased. Also, NAFTA is not applicable to Canadian origin product entered at an over TRQ rate.

If you have any questions regarding U.S. Import Quotas, contact your Livingston account manager or our regulatory affairs department at [usregaffairs@livingstonintl.com](mailto:usregaffairs@livingstonintl.com).

# MERCHANDISE PROCESSING FEES (MPF): WHAT IMPORTERS NEED TO KNOW

By **Philip Sutter**, US Global Trade Management Governance

Maritime shippers need to be aware of new Safety of Life at Sea (SOLAS) amendments requiring marine freight to be weighed, and the potential impact these amendments may have. The amendments have been approved, and are expected to come into force July 1, 2016.

When importing into the U.S., landed cost calculations must include both the duty on the product and associated fees, like the Merchandise Processing Fee (MPF). MPF should not be overlooked in evaluating your costs, and how to potentially avoid them. The MPF has been in place for thirty years and has been the subject of criticism and debate throughout this time. MPF changes are happening now and are planned for the future.

MPF costs can add up quickly. At present, the MPF is charged ad valorem on each entry at 0.3464% with a minimum of \$25 and a maximum of \$485, according to 19 CFR § 24.23(b)<sup>1</sup>. Do you have an MPF avoidance plan?

Most current US trade programs do exempt eligible goods from MPF

Duty avoidance is always a marquee highlight of free trade agreements. It is a misconception that goods qualifying for a preferential agreement will be automatically exempt from MPF. This is only the case where the legislation authorizing the trade agreement makes it so. Most current US trade programs do exempt eligible goods from MPF<sup>2</sup>. Two current trade agreements (Jordan and Morocco) do not.

## EXEMPT FROM MPF

- \_\_\_\_\_ African Growth and Opportunity Act (AGOA)
- \_\_\_\_\_ Caribbean Basin Economic Recovery Act (CBERA)
- \_\_\_\_\_ Caribbean Basin Trade Partnership Act (CBTPA)
- \_\_\_\_\_ Dominican Republic-Central America Free Trade Agreement (CAFTA-DR)
- \_\_\_\_\_ Generalized System of Preferences (GSP)

- \_\_\_\_\_ North American Free Trade Agreement (NAFTA)
- \_\_\_\_\_ Australia Free Trade Agreement (AUFITA)
- \_\_\_\_\_ Bahrain Free Trade Agreement (BHFTA)
- \_\_\_\_\_ Chile Free Trade Agreement (CLFTA)
- \_\_\_\_\_ Colombia Trade Promotion Agreement (COTPA)
- \_\_\_\_\_ Israel Free Trade Area Agreement (ILFTA)
- \_\_\_\_\_ Korea Free Trade Agreement (KORUS)
- \_\_\_\_\_ Oman Free Trade Agreement (OMFTA)
- \_\_\_\_\_ Panama Trade Promotion Agreement (PATPA)
- \_\_\_\_\_ Peru Trade Promotion Agreement (PETPA)
- \_\_\_\_\_ Singapore Free Trade Agreement (SGFTA)
- NOT EXEMPT FROM MPF**
- \_\_\_\_\_ Jordan Free Trade Area Agreement (JOFTA)
- \_\_\_\_\_ Morocco Free Trade Agreement (MAFTA)

## Originating goods under the Trans-Pacific Partnership (TPP) will not be exempt from the MPF

Of significant importance for future cost avoidance, originating goods under the, yet to be ratified, Trans-Pacific Partnership (TPP) will not be exempt from the MPF. As part of the ratification timeline for the TPP, legislation changes had to be identified by April 4, 2016<sup>3</sup>. MPF was included in the changes, but an exemption was not part of the change. Unless this is added later when the implementing legislation is introduced to Congress, companies will face a dilemma. It will require a decision to either continue to administer multiple FTA programs (where there are overlaps with TPP) or offset MPF payments with the reduction in administrative burden.

According to TPP Article 2.14<sup>4</sup>, the previously discussed provisions of the General Agreement on Tariffs and Trade (GATT) that fees only recover costs incurred and cannot be assessed on an ad valorem basis are reinforced – so MPF must change. Customs has floated a proposal to comply with this provision using a tiered structure of fees. Based on its analysis, the tiers are duty neutral and will only have a minor impact up or down to most importers.

SHIPMENT VALUE	MPF ASSESSED
Entered value between \$25,01 – \$20,000	\$30
Entered value between \$20,001 – \$55,000	\$150
Entered value between \$55,001 – \$130,000	\$260
Entered value greater than \$130,000	\$500

The tiered structure remains ad valorem based, so whether this will be objected to by the other eleven TPP Parties remains to be seen. Or, it could be that the US Congress, with urging from its constituents, will demand changes and accountability for the calculation and assessment of the MPF.

Changes to MPF will be more frequent in the future. The Fix America’s Surface Transportation Act of 2015<sup>5</sup> was signed by the president in December 2015. Under provisions

of Section 32201, it will adjust fees, including MPF, at the beginning of each fiscal year to reflect the percentage increase of the prior 12-month’s Consumer Price Index (CPI). The legislation does not indicate how the increase would be implemented, such as an increased rate or increases to the minimum or maximum. Increases of less than 1% may be ignored. Because the CPI is currently at only 0.7%, there will be no increase in 2016. It will be re-evaluated again on January 1, 2017. At present, Customs and the US Treasury are working together to analyze how to implement future increases, taking into account the tiered structure needed due to TPP<sup>6</sup>.

**Ways to avoid or reduce your MPF liability include the following:**

- Pursue and enter goods using a free trade program.
- Document and enter goods using a chapter 98 program.
- Do not overlook un-conditionally free goods for trade program claims; the duty may be free, but the MPF is not.
- Take note of new FTAs, like TPP, and understand how MPF will be impacted.
- Make consolidated entries.

So, take steps to ensure MPF is included in your landed cost calculations. Now that you are informed, do not be afraid to voice your opinion on the TPP impact and what should be documented by Customs to support the collection of MPF. ◀

1. <https://www.law.cornell.edu/cfr/text/19/24.23>  
 2. [http://www.cbp.gov/sites/default/files/documents/merchandise\\_pf\\_table\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/merchandise_pf_table_0.pdf)  
 3. <https://ustr.gov/sites/default/files/TPP-Changes-to-Existing-Law-Report-FINAL.PDF>  
 4. <https://ustr.gov/sites/default/files/TPP-Final-Text-National-Treatment-and-Market-Access.pdf>  
 5. <https://www.congress.gov/114/bills/hr22/BILLS-114hr22enr.pdf>  
 6. [https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/MPF%20Briefing%20for%20External%20Stakeholders\\_April2016.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/MPF%20Briefing%20for%20External%20Stakeholders_April2016.pdf)

# GEP Ex. 1: EXPORT OF GOODS FOR SPECIAL AND PERSONAL USE PERMIT - IT STILL EXISTS?

By **Brad Lehigh**, Global Trade Management Governance Canada

A General Export Permit (GEP) is a convenient and time saving method when it comes to exporting controlled goods out of Canada. When an export meets the criteria to use the authority of a GEP, it expedites the process as it eliminates the need to make a submission to the government for an export permit.

A General Export Permit (GEP) is a convenient and time saving method when it comes to exporting controlled goods out of Canada. When an export meets the criteria to use the authority of a GEP, it expedites the process as it eliminates the need to make a submission to the government for an export permit. A prospective exporter does not have to wait for the permit to be issued, or go through the process of applying to the government. Most of Canada's eleven GEP's are very restrictive in the manner in which they can be used, and are usually geared towards sending certain products to specific locations.

Then there is General Export Permit Ex. 1.

GEP Ex. 1 is the oldest General Export Permit valid today, and there is a good possibility that even if you are reading this article you may have never heard of it. Before we touch on the problems surrounding GEP Ex. 1 let's take a brief look at what it can be used for.

## **GEP Ex. 1 Purpose**

This GEP allows for anybody to export any goods from Canada provided that

1. The goods have a value of \$100 or less (Cannot separate the unit to get around this threshold)
2. The goods are not radioactive
3. They will not be exported to any country on Canada's Area Control List
4. The goods are not helicopters and/or helicopter parts (Find me a helicopter worth less than \$100 and we can complain then)

Although rules 2-4 must always be followed when using GEP Ex. 1, there are scenarios in which the \$100 threshold is not applicable. Most of these scenarios are for personal use such as gifts/household articles and personal effects of people leaving Canada. However there are a few other provisions which give GEP Ex. 1 some real usability in today's world. An example of this is being able to export goods to the original manufacturer as long as the goods have not been altered while in Canada.

## **Problems with GEP Ex. 1**

GEP Ex. 1 was originally introduced in 1964, and was amended in 1989, mainly to update the value threshold from \$50 to \$100. If you are wondering why I haven't mentioned the most recent amendment, it is because I already have. 1989 was the last time this legislation was amended. That's over 25 years ago, and during that time, many laws and regulations have been introduced, altered, and repealed that would have some effect on this GEP. Let's take a look at a few examples;

- \$100 in 1989 is worth over \$172 today due to inflation
- Old, non-existent laws such as the Goods Not as Ordered Remission Order and the Articles for Special Use Regulations are still cited
- An "Export Control List Number" format that has not been used since 2002 is still being used to specify helicopters and helicopter parts
- SEMA regulations are not mentioned, as the Special Economic Measures Act did not exist until 3 years after the most recent amendment

Even seasoned trade compliance professionals can be

stumped when trying to understand how this antiquated regulation can be used in 2016. Some industry experts have advised this GEP can be used to bypass SEMA sanctions regulations because if the government felt the GEP could be used to skirt SEMA; they would have included a provision preventing such uses in the same manner as newer GEP's have. However, this is risky and it is more likely that SEMA is not mentioned only because it did not exist when the GEP was last amended.

A lawyer may look at the regulation and say go ahead and export helicopter parts using this GEP because "helicopters and their parts as described in item 1460 of the Export Control List" carries very little meaning when 1460 has been a non-existent ECLN number for over 14 years. Although, this would be a risky and ill-advised proposal.

Taking the regulations at face value, one might question why if they wanted to send \$90 worth of ammunition to Iraq, this General Export Permit seems to allow for such a transfer. It just doesn't seem right. Because the regulation has gone beyond being merely "out of date", many trade professionals opt to ignore the GEP altogether and act as if it does not

exist, rather than trying to make sense of it under today's modern Export Control and Sanctions regulations.

## Recommended Changes

It should be clear to both industry and government alike that GEP Ex. 1 regulations are in dire need of a modern update. These proposed changes listed below would provide more clarity and trustworthiness to the regulation. General Export Permit Ex. 1 is a useful and versatile permit, and Canada's government should take the initiative to amend the regulations to allow exporters to feel more confident in using this permit. Going forward, the Livingston International, GTM team will be recommending the following changes at a minimum.

1. Raise the dollar threshold from \$100 to the \$150-\$200 range
2. Make a clear declaration whether or not the GEP can be used to export to end-users in countries that have economic sanctions imposed against them
3. Update the restriction on helicopters and their parts so the current ECLN format is used
4. Remove references to other repealed regulations. ↵

# THE CHANGING FACE OF SPECIAL IMPORTS MEASURES ACT (SIMA) REGULATIONS IN CANADA

By **Brad Lehigh**, Global Trade Management Governance Canada

Three areas of the Government of Canada have conducted consultations pertaining to anti-dumping and countervailing duties covered under SIMA. Canada maintains a trade remedy system that provides recourse to Canadian producers injured by dumped or subsidized imports. Anti-dumping duty is an amount collected that offsets the amount of dumping on imported goods.

Dumping occurs when goods are sold to importers in Canada at prices that are lower than the selling price of comparable goods in the country of export or when goods are sold to Canada at unprofitable prices.

Canada maintains a trade remedy system that provides recourse to Canadian producers injured by dumped or subsidized imports. Anti-dumping duty is an amount collected that offsets the amount of dumping on imported goods.

Subsidizing occurs when goods imported into Canada benefit from foreign government financial assistance. Countervailing duty is an amount collected that offsets the amount of subsidizing on imported goods.

## Canada the first country to adopt an anti-dumping law

Canada enacted the world's first anti-dumping law in 1904. Originally, anti-dumping was mainly regulated under the Customs Tariff, then, in 1969 the Anti-dumping Act came into force. On December 1, 1984, the Special Import Measures Act (SIMA) repealed the Anti-dumping Act and is the regulation under which anti-dumping and countervailing duties are currently governed.

Today, many countries world-wide have implemented anti-dumping proceedings such as the United-States, the European Union and Australia, to name a few.

## Potential amendments to SIMA

On April 30, 2016, the Government of Canada initiated consultations seeking stakeholder views regarding potential amendments to the Special Imports Measures Act (SIMA); the consultation period ended on June 29, 2016.

## The consultation addressed three key areas:

### A. Calculation of normal values:

#### Points of Consideration:

1. Rejection of prices and costs in the exporting market
2. Profit rates

Currently, normal values typically reflect a comparison of export prices against the prevailing price in the exporter's home market.

Consultations were sought regarding amending SIMA to better account for situations where market situations rendered the exporter's domestic sales unusable for normal

value calculation and that the true cost of an input is properly reflected in the transfer price to an affiliated exporter.

## **B. Enforcement:**

Points of Consideration:

1. Anti-circumvention proceedings
2. Scope proceedings
3. Exclusions

Currently, SIMA regulations do not explicitly provide for any formalized proceedings to address circumvention activities, issues of scope, and product exclusions that are difficult to enforce.

Consultations were sought regarding amending SIMA to provide: for anti-circumvention proceedings which would allow the scope of a SIMA finding to address situations of circumvention, to formalize a process for scope rulings in

which interested parties could participate, and to narrow the Tribunal's discretion to grant exclusions based on the product's end-use.

## **C. Evidentiary standards:**

**Points of consideration:**

1. Preliminary determinations
2. Expiry reviews

Currently, each SIMA investigation is conducted in stages. The evidentiary standard increases at each stage of the investigation.

Consultations were sought regarding amending SIMA to provide more clarity pertaining to the preliminary determination of injury as well as the initiation of an expiry review. ◀



# TRANS-PACIFIC PARTNERSHIP AGREEMENT COUNTRY FOCUS: SINGAPORE

The Trans-Pacific Partnership agreement is made up of twelve countries. In this edition of the Global Perspectives, we feature Singapore, a small island city-state that sits southeast of Asia's mainland between Malaysia and Indonesia. This article shares some important information and tips relating to doing business in Singapore.

The Republic of Singapore is a small island city-state that sits southeast of Asia's mainland between Malaysia and Indonesia and is home to a diverse, multicultural population of 5.69 million people, 74% of whom are immigrant Chinese, 13% indigenous Malay and 9% Indian minorities. Singapore's economy is built primarily on exports, with oil/petroleum, technology, and automotive making up the majority.

Singapore was colonized by the British in the early 19th century and became an independent state in 1959, which it remains today. They use a parliamentary, Westminster style of government and is currently led by Prime Minister Lee Hsien Loong, leader of the People's Action Party (whom have consecutively won leadership since independence in 1959) and President Tony Tan Keng Yam.

Singapore has been a major trade point since the 14th century, primarily due to its proximity to the entrance of the Strait of Malacca, a major shipping lane between the Indian and Pacific oceans. In fact, Singapore's main marine port is known as the second busiest in the world (after Shanghai, China), and supported an annual GDP of \$300 billion USD in 2014.

Given Singapore's status as a significant trade port and substantial and growing number of free trade agreements (20 currently, with another 10 in negotiation and implementation), knowing how to properly accommodate business relations with Singapore can be very beneficial. Here are some tips:

- Meritocracy is a major pillar of Singaporean principles. It means that the people who are most able and skilled should lead. As a result, many employees work more hours in a week than their western counterparts and managers and supervisors are expected to work the most.
- Although many Singaporean people don't consider English to be their first language, English is still widely spoken by residents and is used as a common language to bridge everyday socialization with other nationals and foreigners that have a different mother tongue. However, be aware that dialect and intonation usage may change the meanings of some words.
- Following an introduction, an exchange of business cards is seen as a formally important part of a first meeting. The visiting party is expected to present theirs first, held in both hands with print facing the receiver. It is recommended that you have your information reprinted on the other side in the native language of the other party, likely Chinese. Writing on the card or putting it in your back pocket is not recommended.
- When possible, schedule meetings at least two weeks in advance out of courtesy and do not try to schedule meetings during Chinese New Year which is late January or early February, as many businesses in Singapore close for the entire week. When a meeting is set, always be punctual as punctuality is seen as a virtue in Singaporean culture. ◀

# USA-CANADA WOOD PACKAGING MATERIAL EXEMPTION STILL EXISTS, BUT FOR HOW LONG?

By **Don Neubauer**, U.S. Regulatory Affairs

While it is important to have all the information in place when importing your goods into the U.S. it's also important to understand the regulations when using Wood Packaging Material (WPM). Currently, WPM from Canada can enter the United States without meeting the treatment and marking requirements that apply for all other countries. The elimination of this exemption is currently under discussion. This article will explain the exemption and its potential elimination in more detail.

In 2004, the US Department of Agriculture (USDA) Animal & Plant Health Inspection Service (APHIS) Plant Protection & Quarantine (PPQ) adopted the international standard for WPM, previously approved by the International Plant Protection Convention (IPPC). The IPPC standard calls for most WPM to be either heat-treated or fumigated with methyl bromide in accordance with the "Guidelines for Regulating Wood Packaging Material in International Trade," of the International Standards of Phytosanitary Measures (ISPM-15) and marked with an approved international mark certifying that treatment.

The USDA Final Rule requiring all persons using WPM in connection with importing goods into the United States to comply with IPPC standards became effective September 16, 2005.

On February 1, 2006, this enforcement moved to Phase II, with enforced compliance of the regulation requiring exportation of non-compliant WPM.

Full enforcement, Phase III, began July 5, 2006. Enforcement of the international standard has been conducted in accordance with Customs and Border Protection (CBP) operational guidelines and procedures.

More information about WPM can be found on the CBP website:

- Wood Packaging Materials (WPM)
- Frequently Asked Questions on Wood Packaging Materials

## Understanding the US-Canada exemption

Since the initial 2005 effective date, WPM made entirely of Canadian origin wood, or entirely of U.S. origin wood, has been exempt from the treatment and marking requirements in trade between the two countries. The exemption only pertains to WPM coming directly to the U.S. from Canada (as defined by USDA), or directly to Canada from the U.S. (as defined by Canada).

For purposes of enforcement of the USDA WPM regulation, CBP has decided the country of origin of the commodity is the country of origin of the WPM on all shipments coming from Canada, absent an indication to the contrary. In other words, WPM in shipments of Canadian-made goods coming from Canada will be considered Canadian and need not be marked, according to the exemption. However, WPM in shipments of Chinese-made goods coming from Canada will be considered Chinese WPM and must be treated and marked unless there is documentation to prove the WPM is of Canadian or US origin.

In that regard, the following (type) statement on the import documentation is considered to be acceptable: "All WPM associated with this shipment was harvested in Canada and made into WPM in Canada." Note: If the WPM is of U.S. origin, or both Canadian and U.S. origin, the statement should be adjusted accordingly.

If the WPM to be used (in the shipment of Chinese origin goods shipped from Canada) has been treated according to

ISPM-15 standards, it must be evident on the WPM, and the above-noted exemption statement would not be required. Note: Even with the above-noted “actions,” the USDA Animal & Plant Health Inspection Service (APHIS) Plant Protection & Quarantine (PPQ) inspectors always reserve the right to inspect the WPM on inbound shipments. If pests or contaminants are found, the shipments can still be detained or refused.

### **Elimination of the US-Canada exemption?**

The United States and Canada have been discussing the elimination of this exemption for some time. In December of 2010, the USDA published a Federal Register Notice proposing to amend the regulations to remove the exemption that allows wood packaging material (WPM) from Canada to enter the United States without first meeting the treatment and marking requirements of the regulations that apply to WPM from all other countries.

The USDA has not indicated when they expect to publish the final version of the rule. Any changes would first need to be published in the Federal Register, with at least a six-month timeframe prior to enforcement. Preliminary information from when this elimination talk was strongest in 2014 indicated the countries are considering a 2-year phase-in period to allow companies time to acquire kilns and treat surplus material.

### **Questions?**

Livingston International, Inc. continues to monitor the possible elimination of the WPM regulation exemption between the US and Canada. If you have any questions, feel free to contact our US Regulatory Affairs group at [usregaffairs@livingstonintl.com](mailto:usregaffairs@livingstonintl.com).

# LIST OF SOME OF THE TRADE AGREEMENTS IN NEGOTIATION

## **Trans-Pacific Partnership Agreement (TPP)**

While the TPP was signed on February 4, 2016, by all twelve countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam) it still needs to be ratified. Ratification requires at least 85% of combined GDP and at least six countries – and two of them must be U.S. and Japan. There are many opinions on the ratification of the TPP for the U.S., which plays a key role, some believe it will be ratified in the lame-duck post-election period, while others feel the agreement itself is very dependent on the outcome of the U.S. presidential election.

<http://www.international.gc.ca/media/comm/news-communications/2015/10/02a.aspx?lang=eng>

## **Canada-European Union: Comprehensive Economic and Trade Agreement (CETA)**

Canada's Minister of International Trade, Chrystia Freeland, and the European Union's Commissioner for Trade, Cecilia Malmström, have both stated the ratification of the CETA agreement will go forward regardless of the fact the UK is withdrawing from the European Union. The agreement is expected to be signed and finalized at the EU-Canada summit in October 2016. Experts close to both parties have stated, implementation could take place by early 2017.

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/index.aspx?lang=eng>  
<http://ec.europa.eu/trade/policy/in-focus/ceta/>

## **Transatlantic Trade Investment Partnership (TTIP)**

The U.S. and European officials are continuing to work towards their goal of the TTIP agreement by the end of this year despite the fact the UK will be withdrawing from the EU. Many officials believe this goal cannot be achieved because Brussels will be focused on the UK withdrawal process and its ramifications. While there has been progress over the past

eight months there are still a number of issues to resolve before an agreement can be concluded, but both the U.S. Trade Representatives and the EU trade commission are staying optimistic.

<http://ec.europa.eu/trade/policy/in-focus/ttip/>  
<https://ustr.gov/ttip>

## **Trade Facilitation Agreement (TFA)**

The TFA will enter into force once two-thirds of the WTO membership has formally accepted the Agreement. The number of countries on board changes frequently as more countries ratify, the 106 countries required is expected to be reached by year-end. While the U.S. and Canada have approximately 90% of the regulatory compliance completed other countries will be required to make regulatory changes to meet their commitments. The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.

[https://www.wto.org/english/news\\_e/news15\\_e/fac\\_10dec15\\_e.htm](https://www.wto.org/english/news_e/news15_e/fac_10dec15_e.htm) ↵

## Additional websites

### Europe

European Commission link that provides additional information on Free Trade Agreements

<http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>

### Canada

Canada's link that provides additional information on Free Trade Agreements

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fta-ale.aspx?lang=eng>

### United States

United States link that provides additional information on Free Trade Agreements

<https://ustr.gov/trade-agreements/free-trade-agreements>

### Asia

Asia link that provides additional information on Free Trade Agreements

<http://aric.adb.org/fta>

### World Custom Organization

WTO Link to National Customs websites

<http://www.wcoomd.org/en/about-us/wco-members/customs-websites.aspx>

# PUBLIC HOLIDAYS

Country	Date	Weekday	Holiday name
United States	30-May	Monday	Memorial Day
United States	04-Jul	Monday	Independence Day
United States	05-Sep	Monday	Labor Day
United States	10-Oct	Monday	Columbus Day
United States	11-Nov	Friday	Veterans Day
United States	24-Nov	Thursday	Thanksgiving Day
United States	25-Dec	Sunday	Christmas Day
United States	26-Dec	Monday	Christmas Day observed
Canada	01-Jan	Thursday	New Year's Day
Canada	03-Apr	Friday	Good Friday
Canada	01-Jul	Wednesday	Canada Day
Canada	07-Sep	Monday	Labour Day
Canada	12-Oct	Monday	Thanksgiving Day
Canada	11-Nov	Wednesday	Remembrance Day
Canada	25-Dec	Friday	Christmas
Belgium	01-Jan	Thursday	New Year's Day
Belgium	05-Apr	Sunday	Easter Day
Belgium	06-Apr	Monday	Easter Monday
Belgium	01-May	Friday	Labor Day / May Day
Belgium	14-May	Thursday	Ascension Day
Belgium	24-May	Sunday	Whit Sunday
Belgium	25-May	Monday	Whit Monday
Belgium	21-Jul	Tuesday	Belgian National Day
Belgium	15-Aug	Saturday	Assumption of Mary
Belgium	01-Nov	Sunday	All Saints' Day
Belgium	11-Nov	Wednesday	Armistice Day
Belgium	25-Dec	Friday	Christmas Day

For a complete list of holidays visit [www.livingstonintl.com/2016-global-holiday-dates](http://www.livingstonintl.com/2016-global-holiday-dates).



