

Please find included letter from NCBFFA regarding ACE

### **Teamsters Step Up Efforts in L.A. /L.B. Ports**

Beginning yesterday, The Teamsters Union stepped up their efforts to organize the independent harbor drayage drivers in the ports of Los Angeles and Long Beach. The president of the Union, Jim Hoffa, held a press conference at the port to show national support for their local efforts. Pickets were set up at various companies as well as some terminals which did disrupt business for parts of the day. Pickets will be out again today at a warehouse location and a couple of trucking companies. At the time of this writing we have not heard of any pickets at the terminals, but that can change.

The situation is fluid but focused on a small scale thus far, however we will do our best to provide any updated information if conditions within the ports deteriorates.

*The following articles were written by Daniel Meylor*

### **President Obama Authorizes Homeland Security to Produce ITDS Report**

President Obama has delegated the authority to Homeland Security to draft and submit an annual report on the International Trade Data System. There are challenges in finalizing all the partner government agency pilots in ACE for the completion of ITDS. This report should be issued in a Federal Register Notice. We will be watching for it closely.

### **Miscellaneous Trade Bill Passage, Not Looking Good**

While proponents of the Miscellaneous Tariff Bill (MTB) have not yet confirmed if Congress will include an MTB renewal in a final customs reauthorization bill, some lobbyists have reported that the probability is very unlikely. MTB is important to many importers, including U.S. domestic manufacturers who purchase foreign made parts for their U.S. made products. At this time we have heard that without a change, MTB will not likely be included in the bill.

### **U.S. And Mexico Authorize Cargo Pre-Inspection Program**

The United States and Mexico have signed an agreement to develop a pre-inspection processes. They plan to begin operations in three ports. The first will be at Laredo International Airport in Laredo, TX; it will focus on auto and auto parts shipments. The second operation will be at the Otay Mesa crossing in Baja, CA; it will focus on agriculture products. The third site is planned for the crossing at San Jeronimo, Mexico. The sites will focus on both import and export shipments for the two countries and will hopefully eliminate duplicative inspection requirements. The program is set to begin in Laredo by the end of the year.

### **Have You Received All Your GSP Refunds?**

When the Generalized System of Preferences (GSP) expired on July 31, 2013, we were allowed to file entries for customers with imports that could qualify for GSP duty-free treatment. The refunds would apply if and when GSP renewed, using the Special Program Indicator (SPI) "A" while paying duty. U.S. Customs and Border Protection (CBP) accepted the "A" SPI transmitted with the entry as a declaration for a refund.

When GSP renewal was signed into law by President Obama on June 29, 2015, CBP set up a computer script that electronically pulled qualifying entries, whether liquidated or not. The script was able to automatically issue duty refund checks for qualifying entries. Our customers with GSP merchandise have received several of these refunds. The script did work for 98% of qualifying entries, but refunds have to be processed manually for the remaining 2%. The computer script is no longer functioning, and CBP is currently working on the GSP refunds for the unresolved 2%. They expect to have them completed by early November.

*(Article continued on next page . . .)*

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The challenge now is to try to catch any entries that may fall through the cracks and may be missed by CBP in the manual review of open entries. When GSP renewed, we created reports for the qualifying entries so that we could be able to track the refunds and follow up if they were not received. We ask again that our GSP clients review their lists for any qualifying entries in which a duty refund check has not been received. If a check is not received, a refund request should be filed in writing within 180 days of the GSP renewal. If a request is not filed timely, then the rights to the refund will be lost. If you have qualifying entries and have not received your refund, please contact your Carmichael client representative and let them know.

We also ask our customers to inform us if any of their entries, filed since August 1, 2013, might qualify for GSP, but were not declared as such at the time of entry by using the "A" SPI. In this case a separate request must be filed by mid-December asking CBP to review the entry for GSP qualifications and a GSP refund. Again, please let your Carmichael client representative know if you believe a refund is warranted.



By **John Salvo**, *President*

**Subject:** NCBFAA Open Letter to Importers and Exporters

**Date:** October 27, 2015

For over a decade, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) has been intricately involved with Customs and Border Protection (CBP) efforts to bring the Automated Commercial Environment (ACE) to completion. Licensed customs brokers file over 95 percent of all customs entries on behalf of their importing clients. ACE will be the only automated system by which CBP will accept manifest, cargo release and entry summary data for imported goods, and it will also be the single window by which 47 other government agencies involved in the importing and exporting process will receive data about cargo. A number of these partner government agencies have authority to place holds on cargo, and they will exercise that authority in the cargo release process.

ACE will replace the current Customs operating system that has been in place since the mid-1980s. This has been a long and arduous project costing taxpayers in excess of \$3.8 billion over the past 15 years. While we commend CBP on the progress it has made to get the system to where it is today, it must be noted that ACE development has also required continuous, intensive involvement of customs brokers and their software developers. The Association membership has dedicated human and financial resources costing millions of dollars in programming, research, testing and training in preparation for full ACE functionality.

After several failed technology approaches, CBP launched its more successful "agile" method, which has resulted in the ACE system being put into operation piece by piece. As with any major software program, individual deployments were implemented successfully while others caused very substantial and costly difficulties. Those instances resulted in significant delays in the release of cargo, requiring additional and duplicate work in costs borne by both customs brokers and the importing community. This was compounded by the issuance of demurrage and storage charges due to the inability to get the cargo released in the ACE system.

Earlier this year, CBP set a hard deadline of November 1, 2015, for all companies to transition to ACE and transmit customs data, as well as data required for release by ten or so partner government agencies. November 1, 2015 was issued with the intent to shut down the Automated Commercial System (ACS), the legacy 30 year old system. Several challenges along with other factors highlighted that the deadline was not reasonable, and CBP revised the mandatory dates to February 28<sup>th</sup>, 2016 for the bulk of the system. This includes three partner government agencies, with eleven partner government agency data requirements and other system enhancements due in July of 2016.

Any plan to release functionality across all modes of transportation, in all ports of entry, without using a phased-in approach with adequate testing and training, creates the potential for significant disruptions in the supply chain. Recently CBP released functionality allowing air carriers to file their import manifests with CBP in ACE. It did not work properly and created

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havoc with air shipments, resulting in an inability to move shipments, lost business for importers, and significant additional costs for everyone in the supply chain.

NCBFAA is fully engaged: working with CBP; the Partner Government Agencies (PGAs); CBP's parent, the Department of Homeland Security (DHS); the Border Inter-Agency Executive Council (BIEC); and, the White House. At the same time, we are engaged at the operating level: within our industry, with our client importers and exporters, with the software community, with the CBP ACE Business Office (which has developmental responsibility), with policymakers at CBP's Office of International Trade, and field personnel at CBP's Office of Field Operations.

While we applaud the revised dates, NCBFAA remains very concerned about the continued reliance on a new date to shut off the older system. We are reminded of the catastrophe to trade occasioned by Australia's launch of its own new system in 2005 that was driven by a similar approach.

We believe that the measure of a successful date of implementation for the system must be the same for the government and the international trade community. For a successful implementation date to be set, we must have – at a minimum – the following as criteria:

- The average time of release in ACE, from the time of data transmission to full cargo release by CBP, must be equal to or better than the average time of release in ACS today. It must not take ACE longer to perform these functions.
- At minimum, the communications with all trade partners should not be affected when the transition to ACE occurs. Optimally it will be further facilitated in ACE.
- Government exam reasons and results must clearly communicate who is requiring additional action, what actions are required to adjudicate the finding, what the results of the adjudication are, and what actions are required from the trade.
- All data elements must be established, published, successfully tested and finalized a minimum of 90 days before any piece of functionality is required to be put in production. Functionality has already changed multiple times and as it continues to change, it is making software programming difficult and more expensive to finalize.
- Any information collected at the time of cargo release (admissibility) must be for the purpose of establishing the risk of allowing the good to proceed into the U.S. commerce for health, safety, or other risks to the U.S. consumer.
- Data requirements must not add costs to the supply chain in a way that places an artificial trade barrier to the effective flow of the import and export of goods.
- A stable and available CBP and PGA testing and live operating environment is established for all automated interactions without the need for weekly "fixes" to address critical problems.
- CBP and PGA software must be thoroughly tested for all issues including software coding problems, process flaws, and capacity, and pass at an industry-accepted level.
- CBP and PGA personnel in the field that are required to interact with ACE must be thoroughly trained.



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There are concerns that CBP, the PGAs and the trade community are not fully prepared for the complete implementation of ACE. CBP is challenged in having too few trade technical resources that are available to support the transition into the new system, restricting the ability of brokers to successfully implement the ACE system. It is also apparent that the deadlines are not under the exclusive control of CBP, or even DHS. They are being heavily influenced by the White House and are not driven by the completion of the software functionality, but seemingly by arbitrary deadlines.

There may be additional data that is required from you – the importing and exporting community – to move your products in and out of the country for these additional PGA data sets. These agency requirements mean that the system is not more efficient for the broker or the importing or exporting community, nor does it make the process easier for CBP. This process means more data to input, more data to process by the government, more decisions to be made by all parties, more exams to be adjudicated, and in doing so adds more costs to the supply chain. These new data elements and data submission requirements effectively achieve cost transference from the Partner Government Agencies to brokers and importers.

NCBFAA has been at the forefront in the need for the ACE system, supporting funding and a single window across all of the government for both import and export needs. We continue to do so, with the intent to continue to work with CBP, DHS and the White House to ensure its completion *on a reasonable timeline* that will not affect critical trade. While we move into an environment where global trade is increasing, a reliable, efficient and predictable process at the point of importation is critical. We believe that ACE will answer those needs, and a reasonable adoption of the system will accomplish this.

NCBFAA encourages the importing and exporting trade community to stay informed on this issue of critical importance to us all.

