



World Trader

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In this issue:

- [Free Trade Agreements: Commercial Opportunities and Legal Risks](#)
- [The President's Corner](#)
- [Customs Proposes C-TPAT Standards](#)
- [Customs and Border Protection Trade Symposium](#)
- [MGTA Members Pass October 2004 Custom Broker Exam](#)
- [MGTA Winter Reception](#)
- [New Members](#)
- [Calendar of Events](#)

Free Trade Agreements: Commercial Opportunities and Legal Risks

In recent years, the global trading environment has been undergoing a fundamental transformation as more and more countries enter into Free Trade Agreements ("FTAs") and trade preference programs. And the United States has been leading the charge in this area. Until a few years ago, the United States had been relatively inactive on this front, being a party only to the North American Free Trade Agreement and FTAs with Israel and Jordan. This has changed dramatically, however. On January 1, 2004, it entered into two FTAs with Singapore and Chile, and—by mid-2004—had concluded negotiations on five additional FTAs (Australia, Bahrain, Dominican Republic, Morocco, and the Central American countries) and had entered into negotiations for additional FTAs (Panama, Thailand, the Andean countries and the countries of the South African Customs Union) and is considering even more. It is also participating in negotiations for broader regional FTAs, such as the Free Trade Area of the Americas, and has proposed an FTA with an unspecified group of Middle Eastern Countries.

But the United States is not the only country actively engaged in pursuing FTAs. All major trading nations currently have active FTA programs, including those countries that—until just a few years ago—had entered into no (or very few) such trading arrangements. For example, Japan entered into its first FTA in 2002 (with Singapore), has reportedly completed negotiations on a Japan-Mexico FTA, and is reportedly considering FTAs with Thailand, the Philippines, Malaysia, South Korea, Australia, Indonesia, Vietnam, and perhaps India and China. The European Union, the MERCOSUR countries, and many other countries are similarly pursuing FTAs.

Editor's Note:

MGTA is offering a full-day seminar on Free Trade Agreements on December 14, 2004. Please see the MGTA Calendar of Events below for details.

These developments offer both opportunities and risks for traders. By educating themselves about the details of relevant FTAs, traders can organize their supply chains in order to take maximum advantage of the tariff preferences and other advantages that these arrangements offer. For companies selling into a few target markets, it may be sufficient to focus on a limited number of FTAs, such as only those involving the United States. Alternatively, for companies with more complex sourcing arrangements, it may be useful to focus on those countries (such as Mexico or Singapore) that have entered FTAs with numerous potential markets. Investment in these or similar "hub" countries could give a company's products preferential access to multiple important markets—the United States, Canada, Brazil, the European Union and Japan, among others.

The increase in FTAs also brings risks for traders, who must understand and comply with an increasing

number of regulatory requirements imposed on those claiming benefits under the FTAs. Non-compliance with these requirements can subject traders to increased audit scrutiny and significant assessments of back duties and penalties. The rules and conditions of each FTA differ in terms of the products eligible for tariff elimination, the period of time, the speed with which tariffs on each product are to be phased out, and the procedures that govern substantiating claims for benefits. Each FTA also has its own specific rules of origin that determine whether or not a good produced or manipulated in a particular country qualifies as a good originating from the country and whether it is therefore eligible for duty preferences in an FTA partner country.

Fortunately, there has been a trend towards greater procedural simplicity in many recent FTAs. For example, unlike the North American Free Trade Agreement, which requires extensive document preparation, the recently concluded U.S. FTAs with Singapore and Chile do not require that a certification of eligibility be prepared at the time of each shipment. Instead, importers are required to maintain all documents related to the shipment for five years, but must submit certifications of eligibility only upon Customs' request. Although the changes to U.S. FTA rules may reduce the amount of document preparation required at the time of the import transaction, these changes do also require importers to discipline themselves and engage in greater self-policing lest they fail to maintain adequate documentation to substantiate eligibility.

Thank you to the contributing writers: Joel W. Rogers and Joseph P. Whitlock are attorneys for Miller & Chevalier Chartered in Washington, D.C. and can be reached at jrogers@milchev.com or jwhitlock@milchev.com respectively.

[\[Top\]](#)

The President's Corner

This has been a very exciting and successful year for us. We have a long list of accomplishments.

- With your support, we have completed our strategic plan that will provide us a roadmap into the future.
- Our membership has grown in all sectors of international business.
- Beginning in spring 2005, we will provide a more informative website including links to other related sites and a section on current job postings.
- The association provided more networking opportunities this year and all were well attended.

None of these things could have been accomplished without your help.

I would like to take this opportunity to thank the MGTA volunteers for all of the work they provide this association. My special thanks go to the Board of Directors for their steadfast support and direction. As my year comes to an end, I feel confident that MGTA will continue to be a premier international association.

Regards,



MGTA President

[\[Top\]](#)

Customs Proposes C-TPAT Standards

by Jack Ryan, Jack Ryan & Associates

The moans you may have heard from the importing community in the last couple of weeks were caused by the circulation of a CBP proposal to require specific C-TPAT security standards. These new standards, if put into operation, will seriously impact those companies that are already enrolled in C-TPAT as well as those that are considering enrollment.

Although the new standards mention most of the same security measures that were listed in the original program, these measures would be required instead of suggested. For instance, where the original program

stated, "Importers should require business partners to develop security processes..." the proposed standards state, "Importers *must* ensure business partners develop security processes..." From this writer's point of view, it was inevitable that CBP would eventually crank up C-TPAT to require that participants actually set and follow specific security standards for themselves and their supply chain. Otherwise, there could be no guarantee that C-TPAT was any more than a public relations ploy.

The draft document states that the requirements may be different for individual importers based on company size, material imported, etc.; nonetheless, it appears that required standards could be a problem for any importer. Many companies plumped up their C-TPAT security document by mentioning steps that they intended to employ sometime in the future in addition to the standards they actually had in place. CBP rarely, if ever, questioned the veracity of the security statements, but with the implementation of these proposed standards, that would no longer be the case.

To date, the proposed standards have been issued to a limited number of key importers, but all C-TPAT enrollees and those thinking about enrolling should keep an eye on CBP's website (www.cbp.gov) for future developments.

[\[Top\]](#)

Customs and Border Protection Trade Symposium

The CBP has rescheduled its annual International Trade Symposium from a December 2004 date to January 12-14, 2005. The symposium will cover such subjects as border and transportation security, the Trade Act of 2002 implementation, the Bioterrorism Act of 2002, Container Security Initiative (CSI), and the Automated Commercial Environment (ACE).

Registration is now closed, but CBP is accepting names for a waiting list.

For more information, visit: www.cbp.gov/xp/cgov/import/communications_to_industry/trade2004.xml

[\[Top\]](#)

MGTA Members Pass October 2004 Custom Broker Exam

C.J. Petersen of *C.J. Petersen and Associates*, an MGTA member for over 16 years, and Jolene Metty of *Panalpina MSP*, an MGTA member for eight years, passed the October 2004 customs broker exam. Information from Customs and Border Protection stated that only eight or nine percent of the candidates passed this test.

Congratulations, C.J. and Jolene!

For those of you planning to take the next exam, April 2005 is only five months away.

[\[Top\]](#)

MGTA Winter Reception

by Sandy Taylor

The MGTA Winter Reception will be held from 5:00 to 9:00pm on January 20th, 2005, at the DoubleTree Hotel in St. Louis Park (near 394 & Hwy 100).

We are requesting sponsors and door prizes. Please contact Sandy Taylor at mpsjt@hmma.com if you wish to be a sponsor.

Our food and format will be very similar to last year's event. We are planning on having a fun event with networking, prizes and great food.

[\[Top\]](#)

New Members

The following are members who have joined MGTA between August 1 and November 30, 2004. Please take the opportunity to welcome them to our association!

Beth Brewer

Sales
Airtex Design Group

John Brumbaugh

Consultant

Anne Carlson

Project Manager
Airtex Design Group

Bryan Chapman

Director, Supply Chain
Power Sentry

Theresa Cooper

Identix

Earl Duckett

President
Airtex Design Group

Gail Duncan

GM
Universal Promotions, Inc.

Pat Ferguson

Project Manager
Airtex Design Group

Pam Gruber

Operations Manager
Airtex Design Group

Beth Hammoud

Specialists Customs Administration
Northwest Airlines, Inc.

Barb Hoffman

Buyer
Airtex Design Group

Laurie Hueneke

Buyer
Medtronic

Holly Kuehn

Plant Manager
Universal Promotions, Inc.

Paul Lewis

Shipping Coordinator
ADDCO, Incorporated

Mark Lewry

President and CEO
Conwed Plastics

Zac Mangel

Account Executive
DHL Danzas Air and Ocean

Brian Nicholson

TCG Sales Manager
ADDCO, Incorporated

Sue Pfuhl

Logistics Coordinator, Global Sourcing
H.B. Fuller

Sheldon Prom

Advertising and Marketing Coordinator
Komo Machines, Inc.

Kate Reidy

Airtex Design Group

Kathy Snell

IMI Cornelius, Inc

Oralia Stordahl

International Operations
NA Trading and Technology

Walter Tessling

Uponor Wirsbo

Tim Walsh

The Toro Company

Peter Will

Vice President
Universal Promotions, Inc.

[\[Top\]](#)

MGTA Calendar of Events

December

December 14, 2004 – Seminar

Free Trade Agreements

7:30 am - 3:00 pm

Doubletree Park Place Hotel

Please visit www.mgta.org for details.

January

January 11, 2005 – Seminar

Mexico Day

8:00 am - 4:00 pm

Doubletree Park Place Hotel

Please visit www.mgta.org for details.

[\[Top\]](#)

About the *World Trader*

The *World Trader* is a quarterly publication of the Midwest Global Trade Association. Content is gathered via our membership and volunteers through news and media sources. While we make every attempt to insure the accuracy of materials, we provide no warranty or guarantee of accuracy. Specific information relating to trade and trade regulations offered is for informational purposes only and is not intended to replace the professional advice of an attorney, Licensed Customs Broker or other trade professional.

Articles submitted by our membership do not express the views of MGTA or the Board of Directors.

If you would like to submit an article for publication in the *World Trader*, please contact the MGTA office at office@mgta.org. Articles should not be of the nature of a commercial solicitation of products or services; rather, they should be informative on topics of interest to MGTA membership at large.

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