

Merchandise Processing Fees Increased to Pay For the Free Trade Agreements

Sandler, Travis & Rosenberg, P.A. The legislation renewing the Generalized System of Preferences (GSP) and implementing the US-Korea Free Trade Agreement (FTA), which is scheduled to be signed by the President on Friday, Oct. 21, 2011, along with FTAs for Panama and Colombia, increases the Merchandise Processing Fee ("MPF") to 0.3464 from October 1, 2011 to June 30, 2021. This fee is assessed on the entered value of imported merchandise, unless the MPF is waived pursuant to a specific law.

The increased revenues will be used to offset the lost revenue produced by imports that will now enter duty-free under the newly enacted FTAs. Although the GSP legislation contained a temporary decrease in the MPF to 0.1740 from Oct. 1, 2016, to Sept. 30, 2019, the informal advice from the Hill was that this reduction was superseded by the increase contained in the language in the US-Korea FTA. Watch for more on this issue in the future, should the interpretation change.

The legislation does not increase the MPF cap of \$485 per entry.

In addition, the GSP legislation requires importers to prepay MPF fees on Sept. 25, 2012, for merchandise that will be entered between Oct. 1, 2012, and Nov. 12, 2012. The prepayment amount is based on the MPF paid for the same period entered in the prior year (Oct. 1, 2011 to Nov. 12, 2011). The Treasury Secretary will reconcile the fees paid no later than Dec. 12, 2012. Importers will not be charged interest on under-payments, but will receive interest on any over-payments. This provision does not affect the amount of MPF paid, but rather the timing of payments. The presumption is this prepayment is being used to recognize more revenue in the current fiscal year to pay for the FTA negative revenue impact to be incurred in FY 2011. This provision is likely to generate many questions relating to its implementation. Similar questions are likely relating to the payment of MPF for merchandise entered prior to enactment but covered by the legislation.