



Enforcement Starts Now:

"10 + 2" = New Cargo Reporting Requirements for Importers and Carriers. Are You Ready?

As of January 26, 2010, U.S. Customs and Border Protection ("CBP") is expected to begin enforcement of its new cargo reporting requirements for importers and carriers of cargo transported by vessel to the United States, commonly called the "10+2" Rule. This rule was published on November 25, 2008, but the implementation dated was delayed by the rule until January 26, 2010. Although historically CBP has refrained from penalizing importers and carriers exhibiting satisfactory progress and a good faith compliance effort, CBP has stated that as of January 26, 2010 non-compliance could result in significant penalties per violation or the issuance of Do Not Load orders ("DNLs") preventing the entry of goods.

Background

These reporting requirements are meant to enhance CBP's targeting and risk analysis capabilities by increasing the transparency of key supply chain participants, cargo, and events. The following is a summary of the key requirements.

Importer Requirements (The "10" of the "10+2 Rule")

The 10+2 Rule requires importers, including owners, purchasers, consignees, or agents such as licensed customs brokers, to submit full ISFs to CBP for cargo, other than foreign cargo remaining onboard a vessel and certain goods transported in bond, no later than 24 hours before the cargo is laden aboard a vessel destined for the United States. ISFs must be made electronically via the Automated Broker Interface or the Automated Manifest System ("AMS")

and contain the following "10" data elements: (1) seller (name and address); (2) buyer (name and address); (3) importer of record number/foreign trade zone applicant identification number; (4) consignee number(s); (5) manufacturer or supplier (name and address); (6) ship-to party; (7) country of origin; (8) commodity Harmonized Tariff Schedule of the United States ("HTSUS") number; (9) container stuffing location; and (10) consolidator (stuffer) (name and address).

Importers need only submit five elements for foreign cargo that remains onboard and goods intended to be transported in-bond as an immediate exportation or transportation and exportation shipment. These elements include: (1) booking party (name and address); (2) foreign port of unloading; (3) place of delivery; (4) ship-to party (name and address); and (5) commodity HTSUS number.

The Carrier Requirements (The "2" of the "10+2 Rule")

The 10+2 Rule also requires that carriers submit: (1) a vessel stow plan for vessels carrying containers destined for a U.S. port, and (2) container status messages.

(1) Vessel Stow Plan: CBP will use the data contained in the vessel stow plan to compare with the vessel's manifest to identify unmanifested containers. CBP must receive the stow plan no later than 48 hours after the carrier departs from its last foreign port. If the voyage is less than 48 hours, CBP must receive the stow plan prior to the vessel's arrival at its first U.S. port. The stow plan must include standard information regarding the vessel and each

container onboard the vessel. Vessel information includes: (1) vessel name, including its IMO number; (2) vessel operator; and (3) voyage number. Information regarding each container includes: (1) container operator; (2) equipment number; (3) equipment size and type; (4) stow position; (5) any hazmat code (if applicable); (6) port of lading; and (7) port of discharge. Carriers must submit the above information electronically using the AMS, secure file transfer protocol, or e-mail.

(2) Container Status Messages: If a carrier currently creates or collects container status messages (“CSMs”) in an equipment tracking system, that carrier must submit CSMs to CBP regarding certain events relating to all containers destined to arrive in a U.S. port by vessel. Carriers must submit CSMs electronically via the secure file transfer protocol no later than 24 hours after the message is entered into the carrier’s equipment tracking system. CSMs are required when: (1) booking is confirmed; (2) a container undergoes a terminal gate inspection; (3) a container enters or exits a facility; (4) a container is loaded or unloaded from a conveyance; (5) the vessel carrying a container departs from or arrives at a port; (6) a container undergoes intra-terminal movement; (7) a container is ordered stuffed or stripped; (8) a container is confirmed stuffed or stripped; or (9) a container is shipped for heavy repair. CSMs must include: (1) an event code; (2) container number; (3) the date and time of the event being reported; (4) empty or full status of the container; (5) location where the event occurred; and (6) identification of the vessel associated with the container.

Carriers are exempt from the stow plan requirement for vessels exclusively carrying bulk and break bulk cargo. Similarly, carriers are exempt from the CSM requirement for bulk and break bulk cargo. More background information may be found in our previous alert (<http://www.blankrome.com/index.cfm?contentID=37&itemID=1769>).

Enforcement

Even though the 10+2 Rule delayed enforcement period has expired, according to at least one trade association, based on informal discussions with CBP, enforcement in 2010 will be gradual and progressive depending on the

circumstances. *See* American Association of Exporters and Importers, “ISF Enforcement Strategy” (Jan. 20, 2010), available at <http://www.aaei.org/LinkClick.aspx?fileticket=UICAz3wrz5A%3d&tabid=36>. According to this information, in the first quarter of 2010, CBP intends to concentrate its enforcement measures on importers who have not made an Importer Security Filing (“ISF”) despite having imported product, or who have made inaccurate or untimely ISFs. Such importers will be put on notice through the issuance of a warning communicated through the importer’s filer, and corrective action will be required. In addition, CBP has stated that it reserves the right to do whatever necessary for security purposes including placing holds on shipments, conducting non-intrusive inspections, or performing physical examinations. Although CBP does not intend to assess liquidated damages or issue DNLs during the first quarter, instances of non-compliance will be reviewed on a case-by-case basis potentially subjecting noncompliant operators to penalties.

In the second quarter, CBP intends to use holds on cargo and other security approaches as a means to compel compliance. However, CBP has advised that it does not plan to assess liquidated damages or issue DNLs during this period. In the third and fourth quarters, CBP intends to begin assessing liquidated damages on ISF with data or filing problems, including timeliness. By the fourth quarter, CBP will be in full enforcement mode.

Conclusions and Recommendations

Even though enforcement will reportedly be graduated, carriers and importers should ensure that they are complying with 10+2 requirements. Importers and carriers should take this opportunity to refresh their knowledge of the requirements and review their procedures for compliance to avoid delays at the border or the imposition of fines. CBP may exercise “compassion” for a period of time to those carriers and importers who are making good faith attempts to comply with these requirements. The information contained in this alert with regard to enforcement should not be relied on without conferring with counsel or a trade compliance specialist. ■

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