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CUSTOMS PUBLISHES PROPOSED “10 + 2” RULE FOR OCEAN CARGO

On January 2, 2008, U.S. Customs & Border Protection published its proposed rule commonly known as the “10+2” rule that will require importers and carriers to provide additional cargo and vessel data to Customs prior to loading ocean shipments destined for the U.S. The proposed rule has its genesis in the Safe Ports Act of 2006, and the rule aims at enhancing Customs ability to target high-risk ocean shipments bound for the U.S. and serves as an additional security measure to thwart terrorist activities and threats.

“10+2” refers to “10” additional data elements that are designated as a “Security Filing” to be provided to Customs by the importer (or the importer’s designated agent) *plus* “2” data elements to be provided to Customs by carriers/vessel operators. The latter 2 data elements include the vessel stow plan and container status messages to be provided to Customs by the carrier prior to loading the cargo on vessels destined for the U.S.

Except for special provisions for foreign cargo remaining on board (“FROB”), immediate export shipments (“IE”), and transportation and exportation shipments (“T&E”), the proposed rule requires that importers or their designated agents must provide the following 10 data elements at the lowest bill of lading level (i.e., house bill of lading if applicable) to Customs as a “Security Filing” no later than 24 hours before cargo is loaded aboard a U.S. bound vessel:

1. Manufacturer (or supplier) name and address
2. Seller name and address
3. Buyer name and address
4. “Ship to” name and address
5. Container stuffing location
6. Consolidator (stuffer) name and address
7. Importer of record number/Foreign Trade Zone applicant identification number
8. Consignee number(s)
9. Country of origin
10. HTS number at 6 digit level (up to 10 digits acceptable)

The above data elements must be transmitted via a Customs approved electronic data interchange system (“EDI”) – currently via the Automated Manifest System (“AMS”) or via the Automated Broker Interface (“ABI”). The proposed rule indicates that Customs may consider other EDI systems for future approval and will publish any such systems in the Federal Register.

Also, the proposed rule affords the importer the option of filing both the Security Filing and import entry documentation (entry/entry summary) in a single transmission to Customs provided that the importer or a licensed Customs broker handles the transmission (details to be provided in the future on the Customs website).

With respect to enforcement, Customs is proposing a “phased-in” enforcement period similar to that used by the agency in the enactment of the “24 hour” rule (i.e., enforcement phased in over 12 month period following enactment of the final regulation). It should be noted that once Customs enforcement begins, the proposed rule provides for liquidated damages equal to the value of the goods for violations involving non-compliance with importer Security Filing requirements, and liquidated damages for carrier violations of \$5,000 per violation up to \$100,000 per vessel arrival.

Interested parties may submit comments on the “10+2” proposed rule on or before March 3, 2008. The complete text of the proposed rule can be found by clicking [here](#) or by visiting our website at www.worldtradelawyers.com and clicking on the “News” link. If you have any questions concerning the proposed rule, or would like our help in preparing and submitting comments to Customs, please contact Robert Pisani at (202) 466-0960 or send an email to info@worldtradelawyers.com.

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