

26 November 2008

## Customs, Trade and Transport Law E-alert

### Final US 10 + 2 Rule Reports for duty

During the course of this year, I have provided commentary on the "10 + 2 Rule" proposed by US Customs and Border Protection ("CBP") for additional advanced cargo reporting. Based on US legislation, the intention is to include additional data elements in the reports which must be made to the CBP at least 24 hours before cargo leaves a port of export. On 24 November 2008, CBP issued a "Final Interim Rule" ("Rule") which will come into effect on 26 January 2009. This Rule will have an impact on maritime cargo carriers, US importers and those selling goods to the US.

#### A Rule Renamed

Readers should be aware that the Rule has now been renamed as the "Importer Security Filing" Rules ("ISF"). An importer will now be known as an "ISF Importer". This terminology will now be used in the US in relation to the Rule.

#### Who is impacted?

Generally, the Rule affects two parties being maritime carriers of goods to the US and "importers" into the US. For these purposes, the CBP has stated that:

"The ISF Importer or his agent will be responsible for filing the complete, accurate and timely Importer Security Filing. For the purposes of the Interim Final Rule, ISF Importer means the party causing goods to arrive within the limits of a port in the United States. For foreign cargo remaining on board, the ISF Importer is construed as the carrier. For Immediate Exportation ("IE") and Transportation and Exportation ("T&E") in-bound shipments and goods to be delivered to a foreign trade zone ("FTZ"), the ISF Importer is construed as the party filing the IE, T&E or FTZ documentation with CBP".

Accordingly, in our context the Rule is likely to affect the following parties.

- Australian maritime cargo carriers to the US.
- Australian exporters selling on a DDP basis being responsible for all customs clearance and duty payments into the US. They will need to either report this information themselves or appoint an agent to do so on their behalf in the US. A person appointed as an agent to undertake reporting to the US will require the grant of a Power of Attorney to undertake such registration and the lodging of a bond.
- US purchasers of Australian goods. However, this will still have an impact on their Australian exporter and contracting parties who will now be obliged to provide the required data elements to their US clients (the ISF Importers) at an earlier stage.

However, **anybody** arranging for or carrying sea freight to be sent from **anywhere** in the world to the United States needs to observe the Rule.

Readers should be aware that the data submissions required under the Rule must be delivered to CBP by way of a CBP approved electronic data interchange system.

#### History of the Rule

As many would recollect, US CBP issued a Notice of Proposed Rule making in January of this year. Subsequently, CBP collected and evaluated approximately 200 public comments and made significant "enhancements" which are now contained in the Rule.

#### What are the current requirements?

At this stage, carriers are currently required to submit advanced cargo information to vessels no later than 24 hours before the cargo is laden aboard a vessel at a foreign port. This is commonly referred to as the "24 hour rule". Further, under existing arrangements, importers of record must file entry information with CBP within 15 calendar days of the date of arrival of a shipment at a United States port of entry. In addition, within 10 working days of the entry of the merchandise, entry summary information must be permitted. Importers currently have no advanced cargo reporting obligations.

## What are the new requirements?

The reporting requirements will affect different parties in different ways.

### *Carrier Requirements*

In addition to the existing arrangements under the 24 hour rule, the Rule requires carriers to submit the following additional information:

- Vessel stow plan; and
- Container status message.

### *Importers*

Importers will face the majority of the new reporting in relation to shipments of goods to be entered into the United States and goods or to be delivered to an FTZ. Those data elements include.

- Seller.
- Buyer.
- Importer of record number/FTZ applicant identification number.
- Consignee number.
- Manufacturer (or supplier).
- "Ship to" party.
- Country of origin; and
- Commodity harmonised tariff schedule of the United States ("HTSUF").

According to the CBP, the Rule provides some flexibility in relation to four of these elements, being the manufacturer (or supplier), the "ship to" party, country of origin and HTSUF number. In those cases, the ISF must be updated as soon as more accurate reporting becomes available and no later than 24 hours prior to the ship's arrival at a US port.

The Rule will also need to include two additional data elements no later than 24 hours prior to the ship's arrival at a US port. Those data elements are the:

- Container stuffing location; and
- Consolidator.

### *"Cargo passing through"*

Further, in relation to shipments consisting of entirely "Foreign Cargo Remaining on Board" and those for IE or T&E, importers must provide five elements no later than 24 hours before the cargo is laden aboard a vessel destined for the United States. That requires reporting of the following five data elements:

- Booking party.
- Foreign port of unloading.
- Place of delivery.
- "Ship to" party.
- Commodity HTSUF number.

## Introduction of the Rule – Time to act!

As discussed above, the Rule will come into effect from 23 January 2009. Failure to comply could permit the CBP to issue a “no load” directive stopping the shipment of goods. However, for a period of 12 months, the CBP will “show restraint” in enforcing the Rule taking into account the possible difficulty of parties in observing the Rule. At the same time, the CBP will conduct a review to determine any particular compliance difficulties. This could lead to adjustments to the Rule. However, the Rule remains in place and will need to be observed for those sending goods to the United States whether they be carriers or those treated as “Importers”.

As always, we can provide further assistance here together with referral to our Interlaw colleagues in the US who can assist with detailed advice on the Rule and its implementation.

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