

November 25, 2008

## U.S. Customs and Border Protection Publishes Interim Final Rule on Importer Security Filing and Additional Carrier Requirements (“10+2 Rule”)

On November 25, 2008, U.S. Customs and Border Protection (“CBP”) published its interim final rule on the Importer Security Filing and Additional Carrier Requirements—known as the “10+2 Rule”—in the Federal Register. The 10+2 Rule requires importers and carriers to provide additional data elements to CBP for all vessel cargo destined for the United States. The additional data elements are designed to assist CBP in identifying high-risk shipments to prevent smuggling and ensure cargo safety and security.

The 10+2 Rule imposes requirements on both U.S. importers and carriers. Carriers must provide CBP with vessel stow plans and container status messages (the “2” in “10+2”), while importers must provide CBP with the following 10 data elements:

- 1) Seller
- 2) Buyer
- 3) Importer of record number
- 4) Consignee number
- 5) Manufacturer (or supplier)
- 6) Ship to party
- 7) Country of origin
- 8) Commodity tariff (HTSUS) number
- 9) Container stuffing location
- 10) Consolidator (stuffer)

The interim final rule has an effective date of January 26, 2009, although CBP has indicated that it will show “restraint” in enforcing the rule for the first twelve months that the rule is in place. CBP has also indicated that, initially, it will provide flexibility on how and when certain importer data elements are to be provided.

First, CBP will provide some flexibility as to the timing of providing the container stuffing location and the consolidator (stuffer). While importers generally must file the 10 data elements no later than 24 hours prior to lading at the foreign port, these two elements may be filed no later than 24 hours before arrival at a U.S. port.

CBP will also provide flexibility as to the interpretation of information required in four additional elements: manufacturer (or supplier), ship to party, country of origin, and commodity HTSUS number. These elements must be filed no later than 24 hours prior to lading at the foreign port. However, if the precise information is not immediately available to the importer, CBP will allow for a range of acceptable responses to these elements based on facts available to the importer at the time. Importers will be required to update their filings as soon as more precise information becomes available, and in any case, the filings must be updated no later than 24 hours prior to the vessel’s arrival at a U.S. port.

Finally, CBP has revised the liquidated damages provisions for failure to comply with the Importer Security Filing. In the proposed rulemaking, the liquidated damages equaled the value of the merchandise involved. In this interim final rule, however, the damages amount has been modified to \$5,000 per violation.

CBP will be conducting a structured review on the feasibility of, and barriers encountered in, complying with the requirements of the 10+2 Rule. The agency is also soliciting comments with regard to the six importer data elements for which CBP is providing flexibility, as described above. These comments must be received on or before June 1, 2009, which is the date on which the information-gathering phase of the structured review will end.

## We Can Help

If you have any questions about the 10+2 Rule and its ramifications on your business, or if you would like assistance in submitting a response to CBP during the comment period, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below.

	<b>Direct Dial</b>	<b>Email</b>
Peter J. Battaglioli	202.625.3500	peter.battaglioli@kattenlaw.com
David M. Dunbar	312.902.5315	david.dunbar@kattenlaw.com
Eric R. Rock	312.902.5228	eric.rock@kattenlaw.com
Benjamin H. Shanbaum	312.902.5306	benjamin.shanbaum@kattenlaw.com
Mark S. Zolno	312.902.5436	mark.zolno@kattenlaw.com

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