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To: Clients and Friends

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Proposed “10+2” Customs Rules Could Impose Costly Burdens On Importers

U.S. Customs and Border Protection (CBP) has issued a notice of proposed rulemaking on importer and carrier security filing requirements known as the “10+2” rule, as mandated by the SAFE Port Act of 2006. The proposed rules could result in substantial costs to importers who are asked to provide additional data 24 hours in advance of cargo leaving ports aboard. Some of the key elements of the proposed 10+2 rules include:

- Additional advanced data: Importers are asked to submit electronically 10 data elements 24 hours prior to vessel loading, including new data on the manufacturer and supplier, consignees, country of origin, container point of stuffing, and other information. The proposed rules also seem to conflict with the World Customs Organization (WCO) SAFE Framework, which does not contemplate an importer filing, much less the additional data.
- Legal liability and “informed compliance”: The importer, more so than the carrier, is responsible for obtaining complete and accurate data from overseas sources. There is no grace period contemplated for the data requirements, though CBP will take an “informed compliance” approach in the initial period and expect compliance without rigorous enforcement action. Questions have also arisen as to whether the security filings must be transacted by a licensed customs broker; whether they could be amended for goods that are sold in transit; and whether CBP might use proprietary information obtained in security filings for commercial enforcement.
- Compliance and penalties: Compliance, as well as non-compliance, could be very costly as the new rules may alter the way many companies do business. The new rules could impose substantial burdens on the importer to collect and provide data, and could slow down Just-in-Time operations and other aspects of the global supply chain. The Federal Office of Management and Budget has estimated that the 10+2 rule could cost industry between \$350 million and \$600 million annually. Moreover, penalties and liquidated damages for non-compliance could be severe and amount up to the cost of the shipment.

The comment period for the proposed rules was extended, and comments are now due by March 18. Many trade associations and other parties intend to file comments urging CBP to take a more flexible approach given the potentially serious impact of the 10+2 rules on the trade community.

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