



# THE LONDON

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## TO ALL MEMBERS

Dear Sirs

### US CUSTOMS REGULATIONS - ADVANCE ELECTRONIC PRESENTATION OF CARGO INFORMATION

The US Customs and Border Protection (CBP) recently introduced amendments to its regulations governing the advance transmission of information about cargo bound for US ports.

As a result, Members trading to the US will shortly be required to comply with new Automated Manifest System (AMS) rules as well as requirements to obtain a Standard Carrier Alpha Code (SCAC) and an International Carrier Bond (ICB). The amended provisions enter into force on 4 March 2004 - and details of the key new requirements are highlighted below:

#### **Application**

The AMS regulations will affect all ships bringing cargo into the USA including all US non-contiguous and island territories other than the Panama Canal Zone. It is possible that the regulations may not apply in situations where a customs entry is not currently required (eg Louisiana Offshore Oil Port (LOOP), ship to ship transfer operations offshore), but this issue remains in need of clarification.

#### **Carrier**

The SCAC, ICB and AMS reporting requirements apply to ocean Carriers and to Non-Vessel Operating Common Carriers (see below). CBP has described the ocean Carrier as the company responsible for the day to day operation and navigation of the ship, such as the head owner or the bareboat charterer. It is thought that a manager may be construed as being the Carrier if it is clear that the manager has assumed such responsibilities, but this should be verified with CBP in the first instance. In CBP's opinion it is unlikely that a time charterer would be deemed to be the Carrier.

Although a time charterer may continue to issue bills of lading for and on behalf of the master, owner or bareboat charterer, the Carrier will be responsible to ensure that cargo manifest declarations are made via AMS. It is essential to note that the Carrier's SCAC must be used on all bills of lading irrespective of the issuing party, representing a major departure from current practice.

A list of Carriers who are already AMS participants may be found at:

[http://www.cbp.gov/ImageCache/cgov/content/import/carriers/ams\\_5fports\\_5flisting/seaams\\_2exls/v1/seaams.xls](http://www.cbp.gov/ImageCache/cgov/content/import/carriers/ams_5fports_5flisting/seaams_2exls/v1/seaams.xls)

#### **Non-Vessel Operating Common Carrier (NVOCC)**

A Non Vessel Operating Common Carrier is defined in 19 CFR §4.7(b)(3)(ii) as "a common Carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common Carrier. The term 'non-vessel operating common Carrier' does not include freight forwarders...".

Authorised NVOCC's are permitted to make AMS declarations and may issue bills of lading under their own SCAC. The ICB requirement still applies. However, the owner or bareboat charterer will still need to issue a master bill of lading to the NVOCC on which the ocean Carrier's SCAC must be used.

Many slot charterers have acquired NVOCC status, but it seems unlikely that a time or voyage charterer in the dry or liquid bulk trade will be considered to be a "common Carrier".

Details of whom to approach with the aim of becoming an authorised NVOCC are shown on the following web page:

[http://www.cbp.gov/ImageCache/cgov/content/import/carriers/nvoocs\\_5fams\\_2epdf/v1/nvoocs\\_5fams.pdf](http://www.cbp.gov/ImageCache/cgov/content/import/carriers/nvoocs_5fams_2epdf/v1/nvoocs_5fams.pdf)

A list of authorised NVOCC's may be found at:

[http://www.cbp.gov/ImageCache/cgov/content/import/carriers/ams\\_5fports\\_5flisting/nvocc\\_5flist\\_2exls/v17/nvocc\\_5flist.xls](http://www.cbp.gov/ImageCache/cgov/content/import/carriers/ams_5fports_5flisting/nvocc_5flist_2exls/v17/nvocc_5flist.xls)

### **Automated Manifest System (AMS)**

As of 4 March 2004 the Carrier must ensure that all declarations relating to incoming cargo are submitted to CBP via the Automated Manifest System. Depending on the type of cargo, an AMS declaration is to be made either 24 hours before loading or at least 24 hours before arrival at the first US port. If the duration of the voyage is expected to be less than 24 hours, the details are to be submitted on departure from the final port of loading.

### **Dry Bulk and Liquid Bulk Cargoes**

For dry bulk and liquid bulk cargoes an AMS submission is to be made at least 24 hours before arrival at the first US port. Bulk cargo is defined by CBP as:

*"Homogenous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either: (a) free flowing articles such as oil, grain, coal, ore, and the like which can be pumped or run through a chute or handled by dumping; or (a) uniform cargo that stows as solidly as bulk cargo and requires mechanical handling for lading and discharging."*

CBP has also stated that, subject to certain limitations, bulk cargo may include steel coils, steel plates, wire rods, metal ingots, sawn timber, wood pulp, newsprint and various perishable goods.

### **Break Bulk Cargo**

For break bulk cargo an AMS declaration is to be made 24 hours before loading. However, an application may be lodged for an exemption which, if granted, will allow the Carrier to file an AMS declaration 24 hours before arrival at the first US port in the same manner as bulk cargo. Break bulk cargo is defined by CBP as:

*"Cargo that is not containerised and that cannot be classified as "bulk" cargo under the above definition. For example, new and used vehicles will be classified as break bulk cargo."*

*"It is important to note that the difference between bulk and break bulk is based not only on the type of cargo, but also on the way in which the cargo is stowed or loaded. For example, bananas stowed loosely in a hold (not in boxes or containers) will be considered bulk. Palletized boxes of bananas loaded directly into a hold (but not loose or containerized) will be considered break bulk."*

Carriers of break bulk cargo wishing to apply for an exemption should contact:

Customs and Border Protection  
Border Targeting and Analysis, Room 5.4-D  
1300 Pennsylvania Avenue NW  
Washington DC 20229

Email (preferred): [24hour.exemptions@dhs.gov](mailto:24hour.exemptions@dhs.gov)  
Phone: +1 202 927 6060  
Fax: +1 202 927 1435

Applications may take two to three weeks to process and should include the following information:

- The Carrier's IRS number (if applicable);
- The source, identity and means of packaging or bundling of the commodities being shipped;
- The ports of call both foreign and domestic;
- The number of vessels the Carrier uses to transport break bulk cargo;
- The names of the vessels and their IMO numbers;
- A list of the Carrier's importers and shippers, identifying any who are members of the C-TPAT (Customs – Trade Partnership Against Terrorism) programme.

### **Cargoes Other than Bulk and Break Bulk**

For all other types of cargo, including containerised goods, the Carrier's existing obligation to file an AMS declaration 24 hours prior to loading at a foreign port remains unchanged.

### **AMS Submission Details**

All AMS submissions are to include the following information:

- The last foreign port before the vessel departed for the United States;
- The Carrier Standard Carrier Alpha Code (SCAC);
- The Carrier assigned voyage number;
- The date the vessel is scheduled to arrive at the first US port;
- The numbers and quantities from the Carrier's ocean bills of lading;
- A precise description of the cargo (or the Harmonized Tariff Schedule number under which the cargo is classified) and the weight of the cargo;
- Shipper's name and address or identification number;
- Consignee's name and address or identification number; or where goods are consigned to order the "Notify Party" details;
- Vessel name, flag and IMO number;
- The first foreign port where the Carrier takes possession of the cargo destined for the United States;
- The foreign port where the cargo is laden on board;
- Internationally recognised hazardous material code when such materials are being shipped;
- Container numbers (for containerised shipments)
- The seal numbers for all seals affixed to containers.

CBP Form I 302 is to be completed in an electronic format and filed along with the AMS declaration and may be accessed at:

<https://forms.customs.gov/customsrf/getformharness.asp?formName=cf-I302-form.xft>

### **AMS Reporting Methods**

The Carrier may purchase and utilise compatible AMS software for this purpose. For further information see "Getting Started with AMS" at:

[http://www.cbp.gov/xp/cgov/import/operations\\_support/automated\\_systems/ams/getting\\_started.xml](http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ams/getting_started.xml)

Alternatively, and for a fee, the Carrier may submit the information through a third party AMS service provider. The Carrier's agent or representative may forward the cargo manifest details to the AMS service provider for onward transmission, but the Carrier remains responsible for the accuracy of the information. A list of AMS service providers around the world may be found at:

[http://www.cbp.gov/ImageCache/cgov/content/import/operations\\_5fsupport/ams/sea\\_5fvendor\\_2edoc/v7/sea\\_5fvendor.doc](http://www.cbp.gov/ImageCache/cgov/content/import/operations_5fsupport/ams/sea_5fvendor_2edoc/v7/sea_5fvendor.doc)

### **Letter of Intent**

In the first instance, the Carrier should submit a written "Letter of Intent" to CBP advising how they will be filing their Automated Manifest System (AMS) cargo declarations. The letter should specify the type of AMS software to be used or, alternatively, should provide details of the third party AMS service provider selected. The letter should be written on company headed paper and

should include a point of contact, name, title, phone number, email address and the location of the office. The letter should be faxed to:

Customs and Border Protection  
Client Representative Branch  
7501 Boston Blvd, Room 211  
ATTN: Sea AMS LOI  
Springfield, VA 22153

Phone: +1 703 921 7500 (Contact name: Kevin Huck)

Fax: +1 703 921 7563

### **Standard Carrier Alpha Code (SCAC)**

All Carriers are required to obtain a SCAC. Members should contact the National Motor Freight Traffic Association (NMFTA) in Alexandria, VA. Tel: +1 703 838 1810. Website: [www.nmfta.org/scac2.htm](http://www.nmfta.org/scac2.htm). It is understood that the process takes approximately one week.

When making an AMS submission the cargo declaration must contain a unique bill of lading identifier of up to sixteen characters in length, the first four being the Carrier's SCAC. The remaining characters may be either alpha and/or numeric. Once issued, the unique bill of lading number is not to be used again for at least three years.

### **International Carrier Bond (ICB)**

As of 4 March 2004 it will no longer be possible to file a cargo manifest under the agent's bond. Carriers will be required to post an International Carrier Bond to secure payment to CPB of any customs "penalty, duty, tax or other charge provided by law or regulation", which any "vessel, master, owner or person in charge of a vessel" fails to pay upon demand. An ICB is not to be confused with the importer's bond posted by cargo interests. Posting the ICB is the Carrier's sole responsibility; it cannot be delegated to the Carrier's agent or to a time charterer.

The ICB may be a continuous bond covering all visits to US ports by the Carrier's vessels. It remains valid until terminated by the bond provider or by the Carrier. Alternatively, a single entry bond may be obtained. It appears that a bond of at least USD 50,000 will be required, but the amount may be increased or decreased at the discretion of the local Customs Port Director. This suggests that the required sum may vary between ports. Factors influencing the decision may include fleet size, the number of port calls made and the perceived risk. Members are advised to contact the Customs Port Director in the ports visited most often to determine the maximum figure likely to be demanded. Thereafter the bond should be filed by the Carrier in the port where their vessels discharge most frequently or, in the case of occasional calls, any port of choice.

The requirements for obtaining a continuous ICB may vary between bond providers, therefore the following advice is set out in general terms only. Costs may also differ depending on the Carrier's credit rating, but a typical sum appears to be in the region of USD 10 per USD 1,000.

The Carrier should contact an approved surety with authority to write customs bonds on Customs Form 301. For a list of approved sureties, see <http://fms.treas.gov/c570/c570.html>.

The surety agent may ask for some or all of the following information:

- Company details (name, address);
- US tax identification number (if applicable) , or
- Customs-assigned importer number (obtained from a customs broker);
- Financial statement (probably audited);
- Possibly a Letter of Credit or some other form of collateral.

Customs brokers are based in most US ports and many are listed on CBP's website:

<http://www.cbp.gov/xp/cgov/toolbox/contacts/ports/>

Single entry bonds may be obtained from a surety or a customs broker. Some customs brokers may be prepared to arrange a facility based on a power of attorney from the Carrier for the sole

purpose of obtaining a single entry bond, possibly obviating the need for a financial statement and/or collateral.

**Further Advice**

Clarification is being sought of a number of uncertainties arising from the new regulations. The Managers are also investigating whether any alternative more convenient arrangements for achieving compliance with the obligation for the obtaining of ICB's may be possible. However, in the meantime, Members should proceed on the basis that the related requirements detailed in this Circular will apply. Members will be advised of developments and may also find useful the further details of the CBP's requirements (including an extensive and recently updated FAQ page) at:

[http://www.customs.gov/ImageCache/cgov/content/import/communications\\_5fto\\_5ftrade/mandatory\\_5fadvanced\\_5felectronics/tpa\\_5ffaq\\_2edoc/v1/tpa\\_5ffaq.doc](http://www.customs.gov/ImageCache/cgov/content/import/communications_5fto_5ftrade/mandatory_5fadvanced_5felectronics/tpa_5ffaq_2edoc/v1/tpa_5ffaq.doc)

Moreover, Members trading to the US should be aware of the potential implications of the new regulations on existing and future charterparty commitments. In regard to existing fixtures resulting in calls in the US after 4 March, it seems that priorities should involve completing early arrangements for obtaining the necessary bond and SCAC, as well as for submission of the cargo manifest by AMS. Agreement with Charterers should also be sought over responsibility for the costs involved in complying with the CBP's requirements, while for new fixtures, efforts should be made to include charterparty terms which allocate such responsibility in advance.

**Summary - Action Points**

The following matters appear to require the immediate attention of Members involved in trading to the US:

- Establish who is the Carrier (or Carriers) for CBP purposes. In case of doubt, contact CBP for clarification;
- For each Carrier obtain a SCAC from NMFTA and fax to CBP thereafter;
- Obtain AMS software/organise AMS service provider;
- Send a "Letter of Intent" to CBP;
- For break bulk cargo, lodge an application with CBP if seeking an exemption from making an AMS submission 24 hours before loading;
- Contact the Customs Port Director in most frequently used ports to determine the likely required value of the ICB;
- Arrange a continuous or single entry ICB through an approved surety.

Yours faithfully  
A BILBROUGH & CO LTD  
(Managers)