

The Safe Port Act of 2006

What Section 203 will mean
to your importing business.

A VISCO White Paper



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Introduction

The Safe Port Act of 2006 codifies many of the initiatives that have been undertaken by US Customs and Border Protection (CBP) since the attacks of September 11, 2001. The Safe Port Act is the most comprehensive step yet taken toward transitioning voluntary programs such as C-TPAT, into actual requirements for US importers, their foreign vendors, and every entity in between.

While this should increase security, someone will have to bear the costs. Understanding the current discussion is essential if you are to understand the impact on your business.

We believe it is possible for companies to see a net increase in profits even as they comply with the more stringent requirements of the 10+2.

The COAC and the “10+2”

Section 203 of the Safe Port Act references the relationship between CBP and the Commercial Operations Advisory Committee (referred to as the COAC) (“co-ack”). The COAC is the primary point of communication between CBP and “the trade”. Currently, the COAC is made up of representatives of the following companies:

- Pfizer, Inc.
- JC Penney Purchasing Corp.
- Gap, Inc.
- The Boeing Company

- UPS
- Wal-Mart Stores, Inc.
- Delphi Corporation
- Sears, Roebuck and Company
- General Motors Corporation

In addition, there are members from several major North American shipping companies and port authorities.

The COAC meets monthly and its members take their mission very seriously. Typically, the participants from CBP range from the CBP Commissioner (currently, W. Ralph Basham) and assistant commissioners, to executive directors from the various programs under discussion. Those programs might include C-TPAT, ACE, CSI, Post-Incident Resumption of Trade, and any number of other initiatives currently in the pipeline. There are several sub-committees that also meet on a regular basis, often by conference call. The COAC is working diligently to ensure the safety of inbound shipments.

Many of the initiatives in the Safe Port Act actually came out of these meetings. The most recent proposal from CBP and the COAC was announced on December 14th, at CBP’s Trade Symposium 2006, in Washington, DC. Section 203 (a)(1) of the Safe Port Act of 2006, directs



CBP to: “identify and seek the submission of data related to the movement of a shipment of cargo through the international supply chain”.

This data is what has become commonly referred to as the “10+2”. The complete text of section 203 is attached at the end of this document. Essentially, these are twelve data elements that CBP intends to collect electronically prior to lading in a foreign port. The data elements will be transmitted electronically to CBP by the importer of record and/or the ocean carrier. The importer of record will be responsible for the “10”, and the carriers for the “2”.

The 10 data elements for the importer of record are:

Manufacturer name and address
Seller name and address
Container stuffing location
Consolidator name and address
Buyer name and address
Ship to name and address
Importer of record number
Consignee number
Country of origin of the goods
Commodity HTS number (6 digit)

How will this work?

The Safe Port Act requires that the entity most likely to have the data be the entity responsible for the submission. In the case of the 10 data elements, the COAC and CBP have determined that to be the importer of record (or the importer’s agent). Whether submission is by the importer or agent, the cost of compliance will be borne by the importer.

What will this mean to my business?

The easy answer is that it will mean higher costs. If you are importing one product per container, that cost will most likely be minimal (one CBP representative guessed \$25 to have the broker file). But if you are bringing in multiple products per container as is often the case, the burden could become difficult to bear. Let’s look at an example:

Importer ABC supplies 100 retail stores 2 times per month, with direct-to-customer containers from China. This business model maximizes cash-flow for the importer, and eliminates the cost of a US distribution center (fairly typical goals for the small and medium-size importer). Each container holds an average of 30 products.

Under 10+2, this would require 72,000 submissions per year (30 products x 200 containers/month x 12 months). At the \$25 per



submission suggested above, that's \$1.8 million per year in additional costs. That would be an unbearable burden for most small or medium size companies, unless the importer had a way to submit the information without paying a fee.

While the Safe Port Act requires consideration of the impact on small and medium-sized companies, the nature of the membership of the COAC demonstrates the challenges of understanding the small and medium-sized importing operation. CBP and the COAC have asked for feedback from the trade, and we urge the reader to visit the CBP Web site to learn more and to comment via email. The URL is:

http://www.cbp.gov/xp/cgov/import/carriers/trade_overview.xml

Serious business.

Many of the companies we speak with in the course of our business have no idea that this is being contemplated. The comment period ends on February 5, 2007. The goal is to have a proposed rule-making published by May of 2007, with data transmission tentatively scheduled to begin during the fall of 2007.

At VISCOCO, we have advocated involvement by virtually every company we meet. CBP is not trying to hurt small and medium-sized

businesses, but they are tasked with securing the citizens of the United States, and that is their primary concern.

We believe there are ways for the 10+2 to be wildly successful while actually facilitating trade and we are working hard to bring this to the attention of CBP and the COAC. We urge you to become involved as well.

Please feel free to call or write:

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Complete text of the Safe Port Act of 2006 is available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h4954enr.txt.pdf

Section 203 is attached on the following pages.



H. R. 4954 One Hundred Ninth Congress

of the United States of America

AT THE SECOND SESSION
*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and six*

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SEC. 203. AUTOMATED TARGETING SYSTEM.

(a) IN GENERAL.—The Secretary, acting through the Commissioner, shall—

(1) identify and seek the submission of data related to the movement of a shipment of cargo through the international supply chain; and

(2) analyze the data described in paragraph (1) to identify high-risk cargo for inspection.

(b) REQUIREMENT.—The Secretary, acting through the Commissioner, shall require the electronic transmission to the Department of additional data elements for improved high-risk targeting, including appropriate security elements of entry data, as determined by the Secretary, to be provided as advanced information with respect to cargo destined for importation into the United States prior to loading of such cargo on vessels at foreign seaports.

(c) CONSIDERATION.—The Secretary, acting through the Commissioner, shall—

(1) consider the cost, benefit, and feasibility of—

(A) requiring additional non-manifest documentation;

(B) reducing the time period allowed by law for revisions to a container cargo manifest;

(C) reducing the time period allowed by law for submission of certain elements of entry data, for vessel or cargo; and

(D) such other actions the Secretary considers beneficial for improving the information relied upon for the Automated Targeting System and any successor targeting system in furthering the security and integrity of the international supply chain; and

(2) consult with stakeholders, including the Commercial Operations Advisory Committee, and identify



to them the need for such information, and the appropriate timing of its submission.

(d) REGULATIONS.—The Secretary shall promulgate regulations to carry out this section. In promulgating such regulations, the Secretary shall adhere to the parameters applicable to the development of regulations under section 343(a) of the Trade Act of 2002 (19 U.S.C. 2071 note), including provisions relating to consultation, technology, analysis, use of information, confidentiality, and timing requirements.

(e) SYSTEM IMPROVEMENTS.—The Secretary, acting through the Commissioner, shall—

(1) conduct, through an independent panel, a review of the effectiveness and capabilities of the Automated Targeting System;

(2) consider future iterations of the Automated Targeting System, which would incorporate smart features, such as more complex algorithms and real-time intelligence, instead of relying solely on rule sets that are periodically updated;

(3) ensure that the Automated Targeting System has the capability to electronically compare manifest and other available data for cargo entered into or bound for the United States H. R. 4954—22 to detect any significant anomalies between such data and facilitate the resolution of such anomalies;

(4) ensure that the Automated Targeting System has the capability to electronically identify, compile, and compare select data elements for cargo entered into or bound for the United States following a maritime transportation security incident, in order to efficiently identify cargo for increased inspection or expeditious release; and

(5) develop a schedule to address the recommendations of the Comptroller General of the United States, the Inspector General of the Department of the Treasury, and the Inspector General of the Department with respect to the operation of the Automated Targeting System.

(f) SECURE TRANSMISSION OF CERTAIN INFORMATION.—All information required by the Department from supply chain partners shall be transmitted in a secure fashion, as determined by the Secretary, so as to protect the information from unauthorized access.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the United States Customs and Border Protection to carry out the Automated Targeting System for identifying high-risk oceanborne container cargo for inspection—

- (1) \$33,200,000 for fiscal year 2008;
- (2) \$35,700,000 for fiscal year 2009; and
- (3) \$37,485,000 for fiscal year 2010.