

Manufacturers, Importers, Forwarders, Motor Carriers: eManifest Has Arrived

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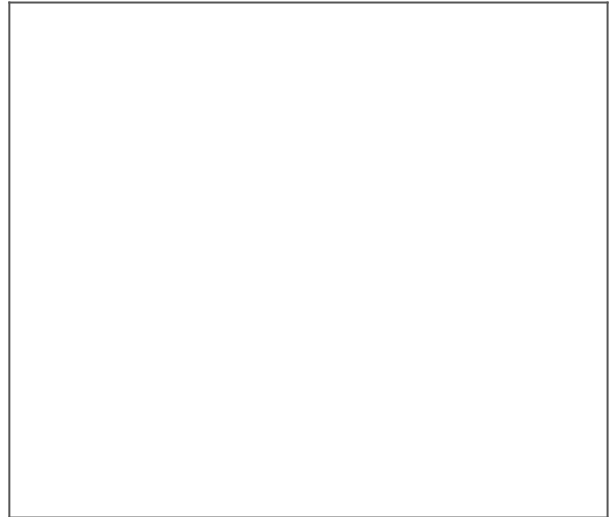
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Effective October 31, 2010, the Canada Border Services Agency (CBSA) implemented the Advanced Commercial Information (ACI) eManifest Program for shipments arriving in Canada by truck.

The eManifest Program is driven in large part by the border security requirements agreed to by the United States and Canada in the wake of the 9/11 events. Following 9/11, the customs world witnessed a shift to enforcement of security measures as opposed to compliance matters. With the introduction and enforcement of eManifest, the CBSA is redirecting its attention to compliance matters as well. In addition to strengthening Canada's security, eManifest also modernizes and improves commercial border crossing processes. It also derives from the CBSA's support for the wide implementation of the World Customs Organization (WCO) framework of standards which aims to:

- establish standards that provide supply chain security;
- enable integrated supply chain management;
- enhance the role, functions and capabilities of customs administrations;
- strengthen cooperation between customs and administrations;
- strengthen custom/business cooperation;
- promote the seamless movement of goods through secure international trade supply chains.

One of the authors attended The Customs Duty and International Trade Course held in Toronto by the Canadian Association of Importers and Exporters, where he was advised that eManifest is in the third phase of the ACI program. Phase one, which was implemented in



2004, required marine Manifests to be reported twenty-four (24) hours in advance of a vessel being loaded. Phase two, which was implemented in 2006, required air waybills to be reported by the air carrier four (4) hours prior to their arrival. Phase three, which is expected to be fully implemented by 2014, will require the advanced reporting of highway carrier information, freight forwarder house bill data, and importer admissibility data prior to the arrival of cargo to Canada. Overall, eManifest expands the ACI requirement to the motor carrier and rail environments, and will in due course extend the requirement for additional advance information from freight forwarders and importers to all modes of transportation.

eManifest will eventually require all commercial import trade partners (motor carriers, freight forwarders, logisticians and importers) in all modes of transportation (air, marine, motor and rail) to electronically submit advance trade data to the CBSA for risk assessment purposes. Unprecedented cooperation amongst all parties in the supply chain will be critical to ensuring that the correct information gets to the correct location at the correct time to avoid delays crossing the border.

The entire concept behind eManifest is that by risk assessing pre-arrival information, any health, safety and security threats related to commercial shipments can be identified before the goods arrive in Canada. The CBSA can then focus resources on those people, goods and conveyances posing the greatest risk to the security and prosperity of Canada.

As many other countries already use eManifest in their import and export controls, the desired effect of introducing eManifest in Canada is that a harmonized system will facilitate and expedite the import and export process between participating countries.

Advance Trade Data Requirements

In order to reduce the administrative burden on businesses, eManifest advance trade data requirements will utilize existing Electronic Data Interchange (EDI) data sets, and have been harmonized to the extent possible with the World Customs Organization and US customs Border Protection Service. The CBSA has published the required data details and guidelines in Electronic Commerce Client Requirements Documents (ECCRD's). The ECCRD for motor transport is available on the CBSA website at www.cbsa.gc.ca.

Before Arrival of Goods at the Border

The CBSA must receive a carrier's electronic cargo and conveyance data a minimum of one hour in advance of goods arriving at the border using any of the following methods:

- An existing EDI public network;
- Third party service provider;
- Customs internet gateway;

- Direct connect to the CBSA;
- eManifest Portal, a secure, web-based reporting option developed by the CBSA to facilitate compliance, particularly for smaller and medium sized transportation businesses.

The advance information to be supplied by carriers prior to arrival at the border comprises dual sets of very detailed information relating to the conveyance itself on one hand, and the cargo on the other. The chart in Appendix 1-A summarizes the information required.

eManifest Timelines and Implementation Guidelines

- October 31, 2010 - Motor carriers may begin EDI transmission of cargo and conveyance data;
- Winter 2011 - Motor carriers may begin to use the eManifest Portal for transmission of cargo and conveyance data;
- Winter 2011 - Rail carriers may begin transmission of cargo and conveyance data;
- Summer 2011 - Freight forwarders may begin transmission of secondary cargo/house bill data;
- Spring 2012 - Importers may begin transmission of importer data in the marine mode.

Although EDI users began to transmit eManifest information to the CBSA on November 1, 2010, the 18 month implementation timeline for all motor carriers to transmit cargo and conveyance data will only commence once the CBSA eManifest Portal has become publicly available in early 2011.

The CBSA has actively encouraged carriers to adopt eManifest requirements early within each model's implementation timeline. Adopting eManifest early will allow carriers time to streamline their business practices and operational efficiencies before the requirements become mandatory, and the Administrative Monetary Penalties (AMPS) for non-compliance take effect.

In the meantime, however, it is important to note that all importers and exporters should continue to retain all paper-based import/export documentation for a period of at least six years. This will ensure that all pertinent documentation will be available for review by the CBSA in the event of an audit. This is of particular importance as the CBSA can consider an importer/exporter's shipment retroactively for four years.

Commencing November 1, 2010, all motor carriers are required to use carrier codes assigned by the CBSA. The use of the itinerant highway carrier code "77YY" will be absolutely eliminated on March 31, 2011. All carriers must procure their unique carrier code prior to that date. Further information on the process for obtaining a carrier code is available at the CBSA website at www.cbsa.gc.ca. For information related to general eManifest support from the CBSA, refer to Appendix 1-B. For technical support from the CBSA, refer to Appendix 1-C.

Regarding implementation, once all eManifest reporting systems (EDI and eManifest Portal) become truly publicly available, there will be a 12 month period for carriers to incorporate eManifest requirements into their business processes. After the initial year, the eManifest

regulations will take full effect; however, the CBSA will offer a further six month period of “informed compliance”. After the expiry of those 18 months, however, non-compliance may well attract Administrative Monetary Penalties (AMPS) as detailed on the CBSA’s website.

As mentioned earlier, failure to abide by the 18 month compliance timeline will result in AMPS being imposed to the importer/exporter. Although AMPS are meant to be corrective and not punitive, a monetary penalty is imposed. The average penalty is \$1,000.00 per contravention. However, the AMPS imposed will not only depend on the type of infraction committed but also on its severity, frequency of the contravention and contravention history of the party involved. For instance, contravention C001 (failure to keep electronic records) is imposed when an importer or exporter fails to keep electronic records in an electronically readable format for the prescribed period. The monetary penalty is imposed as follows: Level 1 (first offence) = \$150.00; Level 2 = \$225.00; and Level 3 = \$450.00. Although these penalties are not large in value, they will tarnish the importer or exporter’s reputation with the CBSA, effectively rendering its future activities to be placed under greater scrutiny by the CBSA.

Generally speaking, it is important to note that Phase II implementation of the AMPS review will take effect on December 15, 2010. For more information on AMPS, please refer to Customs Memorandum D22-1-1.

In preparing this article, the author spoke with Mr. Reynold Martens, Executive Vice President of GHY International, and President of GHY USA, Inc., a Winnipeg-based Canadian and U.S. customs brokerage firm, specializing in providing importers and exporters with international trade compliance solutions, about the introduction and development of eManifest. In particular, we discussed the experience of motor carriers and shippers in transitioning to the new regime. Mr. Martens advises that

the eManifest program is an important development in terms of integrating trade information between all the parties in the supply chain that have a stake in the process--CBSA, importers, carriers, and customs brokerage service providers. We have seen the benefits in the U.S., where the equivalent program was implemented in 2007 and 2008, that resulted not only in a higher level of accountability for the accuracy and timeliness of information being exchanged back and forth, but more importantly, streamlined release processes, fewer clearance delays, and a lower probability of penalties due to non-compliance.

Mr. Martens adds:

Our advice to importers and carriers is to be proactive in understanding how eManifest impacts their supply chains, and to work at fully implementing the program well before the mandatory period begins, when penalties will be applicable, and unnecessary stresses imposed, that will ultimately have negative commercial consequences.

Conclusion

The commercial importation of goods into Canada is obviously a highly regulated activity. By meticulous attention to detail required by eManifest and other protocols, compliance ought to be readily achievable. Implementation of a Compliance Protocol is crucial for anyone in the business of importing and exporting goods. Doing so will not only ensure a more efficient journey through customs, but will also prepare an importer and exporter for the scrutiny that comes with a CBSA audit.

Additional resources can be found in the Appendix section of this article. For information on other government departments and agencies, Appendix 1-D outlines a reference list for importers. In addition, refer to Appendix 1-E for a checklist for importing commercial goods.

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