



be careful what you wish for!

MSK Client Alert

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This oft-stated warning is certainly true for those who engage in international trade. For many years, industry has complained to government about different agencies wanting different information at different times in the release process; some would take the data electronically, while others insisted on hard copies; the data elements were not identical; and, if filers have to input the data more than once, the likelihood of clerical errors rises. Well, all that comes to an end on November 1, 2015 when use of ACE becomes mandatory for all cargo release and entry summary filing. October 1, 2016 is the date by which use of ACE becomes mandatory for all remaining electronic portions of the CBP cargo process. What does this mean for importers and exporters?

On February 14, 2015, President Obama issued Executive Order 13659. It requires by December 31, 2016 that all federal agencies have the "capabilities, agreements, and other requirements in place to utilize the [government's single window system, including] the Automated Commercial Environment, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export..." Customs and Border Protection (CBP or Customs) has announced it is ceasing operation of its existing computer system, the Automated Commercial System (ACS), on November 1, 2015. Everything migrates to ACE by then!

The single window concept has been long in coming. The idea is the filer (customs broker, freight forwarder, self-filing importer or self-filing exporter) provides information about his shipment into one computer system run by the government. That system makes the information available to the federal agencies with jurisdiction over the goods in question which review it, and then determine whether or not the shipment may proceed. Many have heard the term – ITDS – International Trade Data System. ITDS is the computer portal that provides the means by which the data is shared with the relevant agencies overseeing the goods being reviewed. The CBP piece of this system is ACE. The concept is called single window because it meets the trade's request to the government to provide one computer portal into which all shipment details are

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reported, and through which permission to proceed is given by the agencies with hold authority over those goods, and is now close to becoming a reality.

To be clear, major functionality in ACE already exists, but not everything can be done in the system and certainly the interface with agencies other than CBP is a major consideration, especially to facilitate the release of shipments to export or import. On the plus side, many of the federal agencies are already working closely with CBP to be ready by the November 1 deadline, but some still lag behind. CBP held its Trade Symposium in Tacoma, WA on May 27th. Honestly, the more interesting and relevant topics were covered at the event which occurred the following day, at the "ACE / ITDS / Single Window Conference" hosted by the Pacific Coast Council. The most impressive panel of the day featured representatives from the Food and Drug Administration (FDA); U.S. Consumer Product Safety Commission (CPSC); U.S. Department of Agriculture (USDA), Animal & Plant Health Inspection Service (APHIS), Plant Protection & Quarantine (PPQ); USDA, APHIS, Veterinary Services; USDA, Food Safety and Inspection Service (FSIS); USDA, Agricultural Marketing Service (AMS); and Environmental Protection Agency (EPA), Office of Environmental Information discussing together their efforts to be ready by November 1, 2015.

Once fully operational, ACE will fundamentally change the way in which industry and the government conduct business. Because customs broker interface with CBP and so will use ACE, all shipment data will be electronically transmitted through ACE (with rare exceptions) for all the federal agencies with release authority, and so the review of shipment data (export and import) by those agencies should be faster. Risk management will also take a major step forward as information will be promptly available to the deciding agencies. To be clear, ACE applies to exports as well as imports. In fact, exporters should benefit greatly just from the fact Census is uploading its AES data into ACE. As of late June, exporters will now be able to retrieve shipment data for auditing and compliance review without the need to make a formal written request to Census. All you need is an ACE account.

Holds on shipments will be managed by CBP for those agencies which do not directly interface with the filing public. By way of example, FDA will continue to process shipments under its jurisdiction, plus, ACE will allow the agency to eliminate paper notices. Instead, importers will receive their notices through their ACE accounts. On the other hand, EPA and the USDA agencies will issue their releases through CBP via ACE.

The part about being careful what you wish for comes with the significant challenges which remain. First, FDA released its programming requirements on May 20th. This was the last significant set of data elements needed for software vendors to finalize their systems. No more excuses! Anyone who has ever installed new programming knows you need lots of time to test. First, the vendors (or self-programmers) need to program and test, then they need to roll the software out to their customers – the customs brokers and self-filing importers – who also need time to test, and then all the bugs need to be worked out. Obviously the time between May 20th and November 1st is very short. There is massive concern whether everyone will be ready, the government included. However, CBP, FDA and other agencies are saying they will stand up war rooms when testing starts this summer, so that when the switch is thrown on November 1, as many glitches as possible will have been identified and resolved.

FDA announced it will start testing ACE functionality in July. Various agencies within USDA are seeking participants in pilots they want to run this summer, too. All-in-all, there is much left to do. Whether you are a



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customs broker or self-filing importer, does your software vendor have its programming ready? If not, when will it be released for testing? If you are an importer, have you figured out the additional data elements you will need to provide to your customs broker? Keep in mind that whereas in the past, the customs broker received the hard copy document (such as licenses, permits and certificates) and conveyed those originals to the relevant agency, now your customs broker is going to be keying that data into ACE. Do you have a way to transmit the data to your broker electronically? If not, why not? On the export side, AES is going to migrate into ACE. Are you ready for that change?

The general consensus among all the agencies is the earlier entries can be filed in advance of arrival, and declarations in advance of export, the more likely it is the release will occur prior to or at time of arrival/ departure. The agreed upon pre-file time frame minimum seems to be three (3) days for ocean shipments, with shorter periods for other modes of transportation. That's the good news. The less than good news is the possibility of data creep. This is the phenomenon where agencies ask for more data elements than are mandatory for an admissibility/release decision. CBP is on the look out for this, but in the end, each agency sets its own requirements.

For importers, the key factor to keep in mind is whatever agencies have jurisdiction over the entry and release of your goods will now be able to see that data in real time in ACE. Similarly, whereas many of those agencies previously saw only release data, once on ACE, they will now also be able to see entry data. That means, if there are changes made to your import declaration between time of release and time of duty payment, those changes will be obvious. As such, you can bet if those changes have to anything do with admissibility factors, the path to enforcement action will be swift and based on easily retrievable ACE data.

On the export side, the tedious delays arising when CBP has a question about whether a license is required for a particular export, and so routes that question through the Exodus Command Center which interfaces in D.C. with State and Commerce (or others), should now be reduced as a result of quicker communications between the agencies. At the same time, on the enforcement side, State and Commerce will more easily be able to see license declinations and discern patterns about exported goods, simply by accessing data in ACE.

CPSC has already announced it will not be one of the agencies on-boarding on November 1st. This delay is caused by the Commission needing to first resolve the electronic filing of the certifications required by the Consumer Product Safety Improvement Act, but other legal and regulatory changes are also needed. Nonetheless, CPSC expects to begin testing electronic targeting this summer.

The changes in the law/regulations issue CPSC acknowledges is one which other agencies may need to work through as well. If you import a product that requires a phytosanitary certificate (for example), the relevant USDA agencies may be willing to accept that data electronically since they are on ACE, but if you are audited or investigators start looking at your operation, will they understand and accept you no longer receive a written release from CBP? It's now all electronic.. How will that work in your world?

One thing common whether we are discussing imports or exports, and something companies need to think carefully about, is the impact of all the agencies being able to look at your shipment data in ACE. This fact will allow the agencies to use data mining in a way that has not been possible in the past, and could lead to some



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"interesting" enforcement actions in the future.

If your customs broker or freight forwarder has not already started talking to you about the changes to your operation coming with ACE, now is the time you should be asking questions. Waiting until October is too late! Set up your ACE account now!

*To learn more about ACE and how it will impact your business, take a look at the ACE portion of the CBP website **here**. You can sign up there for messages about ACE, locate training sessions and check the Frequently Asked Questions for more details. The ACE program on May 28th was just the first of many CBP is sponsoring with the support and direct involvement of many partner government agencies. Unless you are sleeping through the next few months, there is no excuse for you not to know what changes are coming to your business – whether import or export. Also keep in mind, ACE is one step, with the longer term expectation of an international single window!!!*