



International Services Group

Client *Advisory*

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What's changed since 9.11 in the Global Movement of People and Goods?

In the four years since 9.11.01, the US and other governments have strengthened controls on the cross-border movement of people and goods. What are the major changes by the US Government since 9.11? How can an importer or exporter of goods best adapt to the new rules? What must multinational businesses know about the cross-border movement of people?

Changes for the Movement of Goods

The Department of Homeland Security now oversees the renamed Bureau of Customs and Border Protection (see www.cbp.gov).

C-TPAT formed as a joint government-business partnership, to improve compliance in supply-chain security. If a business joins C-TPAT, it will see 3-5 times fewer cargo examinations and 5-8 times less probable enforcement examinations, plus reduced fees and delays.

Importer self-assessment (ISA) is a voluntary partnership between Customs and importers. Through self-compliance and ongoing internal audits, importers will achieve greater compliance with import rules and will be less likely to be inspected or fined for violations.

The Known Shipper Policy of the Federal Aviation Administration aims to ensure air cargo security. "Known shippers" with an established history gain advantage.

The Canada-US Smart Border Declaration is a 30-point Action Plan aimed at expediting commercial flow while increasing security.

The Container Security Initiative (CSI) targets the top 20 ports serving the US with a US Customs presence. The objective is to examine high-risk maritime containers and expedite the flow of containers to the US from these ports.

The 24-Hour Rule requires ocean carriers and non-vessel-operating common carriers to submit a cargo declaration 24 hours before cargo is put aboard a vessel abroad, which is transmitted to Customs via the Automated Manifest System.

The Trade Act of 2002 requires electronic cargo information to CBP with shipment details for arriving and departing cargo and differing deadlines for transmitting the information.



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The 2002 Bioterrorism Act mandates prior notice of shipment of food-related products 2 hours by land via road and 4 hours by air or land via rail, 8 hours by water.

The FAST program (Free and Secure Trade) is a US-Canadian initiative to move pre-approved eligible goods cross-border.

The result of providing benefits to businesses that enlist in new programs is to increase the risk of delay and cost for businesses that do not conform. To ensure prompt delivery of products into the United States, foreign exporters and US importers should embrace the partnerships offered by CBP and other agencies.

US export controls have increased in reach and complexity. Potential export or re-export of US-origin products to countries considered by the US to be state sponsors of terrorism is prohibited, and a "denied persons" list must be checked to ensure no product is delivered to persons or organizations on this list. Licensing requirements for a broad range of sensitive products (including many that might not appear to be obviously military in application but could end up in China or other countries deemed to be sensitive destinations) have increased. Care must be taken to determine whether a US export license is required. The "deemed export" rule can require an export license for sensitive technology to be shared with non-US nationals. Rules and enforcement measures of the Office of Foreign Assets Control (OFAC) have broadened, with the intention of denying export or re-export of US-origin goods to countries disfavored by the United States.

A Best Practices guide is published and available for guidance. Any substantial US importer or exporter should adopt conforming policies and procedures, update international sales documentation and distribution chain agreements, appoint compliance officers and educate its workforce about compliance with US export and import regulations.

Changes for the Movement of People

Over the past several years, the Department of Homeland Security has set forth increasingly stringent rules regarding entry requirements into the United States. As of June 26, 2005, all business visitors and tourists from the 27 Visa Waiver Program countries (VWP) must have a machine readable passport to enter the United States without a visa. The Department of Homeland Security has also announced that the VWP countries will be required to produce passports with digital photographs by October 26, 2005. In addition, within one year, VWP countries will be required to present a plan to begin issuing passports with biometric identifiers contained in integrated circuit chips.

Under the Enhanced Border Security and Visa Reform Act of 2002, no visa shall be issued to any foreign national from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety or national security of the United States. The list of state sponsors of terrorism include the following countries: Cuba, Iran, North Korea, Sudan and Syria (watch for changes!). Any individual born in one of these countries, or with significant ties to it, will be subject to additional security checks.



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A security clearance will be necessary if an applicant for a visa will be engaged in an activity that falls under the Critical Fields List of the U.S. State Department's Technology Alert List (TAL). These activities may include graduate level study, teaching, conducting research, participating in exchange programs, receiving training, employment or engaging in commercial transactions. The Critical Fields List is very broad, covering not only such categories as conventional munitions, nuclear technology and rocket systems, but also such fields as chemical biotechnology, biomedical engineering, materials technology, navigation and avionics and urban planning.

An immigration system that must simultaneously prevent terrorists and terrorist weapons from entering the United States and allow the flow of legitimate trade and travel is necessarily a complicated system. US businesses hiring foreign nationals or transferring international employees into the United States must negotiate a wide range of legal and procedural issues. Companies hiring foreign personnel must be aware of additional rules and regulations and build in the extra time necessary to complete all compliance activities.

"Deemed export" rules mean that transferring sensitive US technology to non-US personnel may require an export license. This affects the ability to use a multinational workforce or offshore work to talented foreigners abroad. Policies, procedures and training are needed to avoid accidental violations of US export control that affect the use of foreign workers.

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