

WSC/ECSA WORKSHOP

January 27, 2010

ENTRY SUMMARY DECLARATIONS (ENS): NEW FAQs

1. General questions

1.1 Will Member States communicate to traders specific penalty provisions concerning the lodgement of ENS (and/or EXS)?

The Community legislation does not include penalty provisions regarding lack of lodgement of ENS (and/or EXS). Any penalties will be issued pursuant to the national Customs legislation in the individual Member States.

1.2 For the arrival notification and the diversion request, the vessel operator must provide either the “Entry Key” data elements or the list of MRNs for all the shipments carried on the vessel. Does the vessel operator have discretion in choosing between the two types of reporting?

Yes, this is left to the vessel operator's discretion. Every Member State must accept that the Arrival Notification and/or the diversion request provide either the “Entry Key” data elements¹ or the list of MRNs for all shipments carried on the arriving/diverting vessel.² As the vessel operator may not have all the MRNs of its vessel sharing partners and the MRNs for any ENS that they may have consented to be lodged by 3rd parties, the vessel operator or its representative quite likely would choose to include the Entry Key information in its Arrival Notification.

1.3 The Community rules require that the summary declaration for temporary storage includes a reference to the previously lodged ENS (where applicable). How should the summary declaration for temporary storage refer to the previously lodged ENS?

¹ These data elements are: Mode of transport at the border; identification of the means of transport crossing the border, i.e. the IMO vessel identification number; expected date of arrival at first place of arrival in the customs territory of the Community (as declared in the original ENS); declared first place of arrival code; and actual first place of arrival code.

² The following data elements must be provided together with the MRNs: mode of transport at the border; declared first place of arrival code; and actual first place of arrival code.

The Community rules leave it to the individual EU Member States to decide what form the reference to the ENS (where applicable) may take: A Member State may require that the reference be in the form of the MRN for the ENS covering the goods to be placed in temporary storage, or the Member State may allow that the “Entry Key” data can be provided instead of the MRN. This is different from the Arrival Notification and the diversion request (discussed in Question 1.2 above), where the vessel operator always has discretion to provide either the MRNs for all the shipments carried on the vessel or the “Entry Key” data.

1.4 How will container equipment (e.g. power packs) be handled? Does such container equipment need to be included in the ENS?

No, container equipment such as power packs does not need to be included in the ENS.

The Community rules require the risk assessment of “goods” before they are brought in to the Community. This means that goods transported pursuant to a transport contract would need to be included in the ENS. Equipment used for the purpose of operating the ship and/or for the handling of the cargo loaded on to the ship is not “cargo” and would thus not need to be included in the ENS. Such equipment types may still be subject to “normal” customs procedure as is the case today, e.g. oral customs declaration once the equipment is taken off the ship and presented to Customs, but there is no requirement for it to be included in the ENS.

1.5 Are empty containers to be reported in the ENS?

Shipper-owned empties that are being transported pursuant to a contract of carriage shall be treated the same way as any other cargo and must therefore be included in the ENS.

Carrier repositioned empties may continue to be reported to Customs as is done today at arrival and are not to be included in the ENS.

1.6 Why do some national technical specifications for the lodgement of ENS differ from the Commission’s Functional and Technical Specifications for the Import Control System (ICS)?

The reason for possible divergences is that the Commission’s Functional and Technical Specifications for the ICS are not binding on the Member States. For example, whereas the Commission’s Functional and Technical Specifications do not include a deletion functionality for ENS, certain Member States’ national technical specifications include such a functionality.

1.7 What will be the implementation plan of the ENS filing requirement? Will there be a transitional phase?

The Community legislation does not provide for an “informed compliance” period similar, for example, to the one used in the U.S. for the American 24 Hour Rule. So, in principle, the lack of compliance after December 31, 2010, when the ENS and EXS filing requirements become mandatory, could trigger sanctions pursuant to national Customs legislation (see also 1.1 above).

However, the Commission agrees that a brief transitional phase should be arranged for deep-sea containerized traffic (that is the only mode with a pre-loading ENS filing requirement). The Commission has confirmed that it will include such a brief transitional phase in a revised version of its ENS guidelines posted on the TAXUD website at: http://ec.europa.eu/taxation_customs/customs/security_amendment/procedures/index_en.htm.

WSC has proposed – inspired by what was arranged when the U.S. 24 Hour Rule took effect – that the ENS filing requirement takes effect for voyages that begin after midnight December 31, 2010. For example, consider a scheduled voyage itinerary of Singapore-Colombo-Algeiras. If the ship begins the voyage (i.e. departs) from Singapore before December 31, it would not need to file ENS prior to loading in any of the load ports. The fact that the vessel loads in Colombo after January 1 would not trigger an ENS filing requirement prior to loading in Colombo. If the vessel departs from Singapore after midnight on December 31, 2010, then ENS filings would be required for each of the foreign load ports. Under this approach, all vessel voyages that begin with a port departure after midnight December 31, 2010 would be required to have ENS filings for all cargo loaded aboard prior to arrival in the first European port of call.

2. Different scenarios

2.1 In a rotation Shanghai – Singapore – Le Havre – Rotterdam – New York, goods are loaded in Shanghai to be unloaded in Rotterdam. The cargo loaded in Singapore will be unloaded only in New York. Where does the ENS have to be sent? Will Le Havre be considered as first Customs office of entry, even though the cargo is not meant to be unloaded there?

The ENS must be sent to the Customs office of first port of entry in the Community whether or not containers are to be discharged in that port. In the above example, the ENS will have to be sent to the scheduled first Customs office of entry, i.e. Le Havre, prior to loading in Shanghai and in Singapore irrespective of whether the containerized shipments are to be discharged in Le Havre, Rotterdam or New York.

2.2 In a rotation Hong Kong – Le Havre – Hamburg, goods are loaded in Hong Kong to be unloaded in Hamburg, with transshipment in Le Havre. What has to be transmitted to Le Havre, respectively Hamburg?

The bill of lading issuing ocean carrier is responsible that ENS are lodged with the Customs office of first entry in the Community, i.e. Le Havre, for all cargo to be loaded on to the vessel in Hong Kong.

No ENS is required to be lodged for intra-Community traffic provided that the vessel does not call at an intermediate port outside the Community; if the vessel does call at an intermediate non-EU port (which is not the case in this example), an ENS covering all the goods carried on the vessel must be lodged anew to the Customs office of first entry in the Community when the vessel re-enters the Community even if the goods were already covered by the original ENS.

In this example, the vessel operator of the main haul vessel operating from Hong Kong to Le Havre must lodge an Arrival Notification to Customs in Le Havre (see also 1.1

above). No Arrival Notification is required to be lodged by the vessel operator of the ship going from Le Havre to Hamburg so long as the vessel does not call at an intermediate non-EU port between Le Havre and Hamburg.

Prior to or upon arrival at each Community port, a manifest must be lodged for all containers to be unloaded at that port. In the example, such manifests will have to be lodged in Le Havre and in Hamburg; the content of the manifest is prescribed by the national legislation of each EU Member State, not by Community legislation.

If the ocean carrier is the party presenting the goods for temporary storage, it must also lodge the summary declaration for temporary storage for goods that are discharged and presented to Customs in Le Havre and in Hamburg.

2.3 In a rotation New York – Lisbon – Tunis – Tangiers – Genoa, where do the ENSs have to be lodged?

This rotation involves two calls at non-Community ports in short sea traffic before calling an EU port again. For cargo loaded in New York, a first ENS must be lodged with the Customs office in Lisbon as this is the first Customs office of entry. For the cargo previously loaded in New York **and** for the cargo loaded in Tunis and Tangiers, a second ENS must be lodged with the Customs office in Genoa after the vessel left Tangiers and at the latest 2 hours prior to arrival at Genoa. All containers arriving in Genoa need to be covered by an ENS lodged with Customs in Genoa, even if some of those containers already were included in the first ENS lodged with Customs in Lisbon when the vessel came into the Community the first time.

2.4 Roll-over scenario: New York – Le Havre – Antwerp – Rotterdam vessel rotation. Vessel A calls at Antwerp where it will be completely discharged as it will be phased-out of service. All cargo from Vessel A will then be loaded onto Vessel B which will be phased-in into the service rotation. Does such scenario require a second ENS to be lodged with Customs in Rotterdam?

No, this scenario does not require the lodgement of a second ENS. The EU's advance cargo security rule is based on the principle that the Customs office of first entry (here Le Havre) performs the risk assessment for all EU Member States; once it has done its risk assessment, and the vessel has arrived at the Customs office of first entry, the process has ended, and no amendments need subsequently to be made to the original ENS. Nor is any subsequent ENS required to be lodged with Antwerp and Rotterdam even if the vessel changes.

However, the carrier will still need to lodge the normal arrival manifest with Antwerp (and Rotterdam) and - because the goods are unloaded and have status as non-Community goods - they will need to be summarily declared for temporary storage in Antwerp and then taken out of temporary storage before the goods can be loaded on to Vessel B. An arrival manifest must also be lodged with Rotterdam where the goods may also need to be summarily declared for temporary storage again.

2.5 A shipment is loaded in Singapore for Le Havre. The ENS is sent to Le Havre 24 hours prior to loading in Singapore. Before reaching Le Havre, it is decided that the shipment should, instead of being unloaded in Le Havre, return to Singapore. How is this addressed?

The filing of an ENS for a shipment does not entail an obligation to actually discharge the shipment in a Community port -- as long as it has been included in the ENS and been risk assessed, the shipment can simply stay on board the vessel as FROB during the vessel's calls at EU ports and remain on board as FROB when the vessel heads back foreign again. No new ENS (or EXS) would be required to be lodged for that FROB shipment.

If, however, the shipment is unloaded in Le Havre to be loaded on to another vessel for return to Singapore, it must upon discharge be presented by the carrier to Customs in Le Havre and be summarily declared for temporary storage. Depending on how long the shipment "sits" in temporary storage before it is to be loaded to the other vessel, either a re-export notification or an exit summary declaration (EXS) must be lodged with Customs in Le Havre in order to have the shipment released for exit.

2.6 Vessel routing is Singapore-Le Havre-Morocco-Rotterdam-Antwerp. After the vessel has departed Le Havre, the routing changes to Morocco-Felixstowe-Antwerp. With the routing change, what will the ENS filings include and when/where will the filings be done?

The answer follows the same format as in Q. 2.3:

For the cargo loaded in Singapore, a first ENS must be lodged with the Customs office in Le Havre as this is the first Customs office of entry. For the cargo previously loaded in Singapore **and** for the cargo loaded in Morocco, a second ENS must be lodged with the Customs office in Felixstowe after the vessel left the Moroccan port and at the latest 2 hours prior to arrival at Felixstowe. All containers arriving in Felixstowe need to be covered by an ENS lodged with Customs in Felixstowe, even if some of those containers already were included in the first ENS lodged with Customs in Le Havre when the vessel came into the Community the first time. Because Rotterdam is no longer on the vessel's itinerary, the ENS lodged with Customs in Felixstowe must indicate where the cargo originally destined for Rotterdam will now be unloaded, i.e. either in Felixstowe or in Antwerp (or remaining as FROB for return to Singapore).

Note: The above question seems to be triggered by the fact that one Customs administration (France) already did one risk assessment, including for goods to be discharged in Rotterdam and Antwerp, but now there will be a second risk assessment (UK) for the same goods (plus the goods loaded in Morocco).

According to the EU advance cargo security rules, a risk assessment must be done whenever a vessel arrives in to the Community after having called at a non-EU port. The only exception to this principle is vessels coming from a Norwegian port – in such cases, no ENS would need to be lodged with Customs in the first EU port of arrival.

In the example, the first risk assessment by French customs, including for the FROB cargo destined for Rotterdam and Antwerp, was done to avoid that goods that raise security concerns either do not enter the Community to begin with or are inspected once they enter the Community even if the goods were not going to be unloaded in Le Havre. That risk assessment process is completed and ends once the ship leaves Le Havre and goes foreign (to Morocco). A materially new risk assessment process starts when the ship comes in from Morocco, i.e. British customs will identify goods that either present

such a risk that they must be inspected in Felixstowe even if the goods are not going to be discharged there (Risk Type B) or, while still representing a risk, it is sufficient that the goods be inspected at discharge in Antwerp (Risk Type C). (Because the Morocco-Felixstowe routing is short sea shipping the DNL instrument can't apply here).

It is true that both French customs (based on the first risk assessment) and British customs (based on the second risk assessment) might either have informed Belgian customs in Antwerp to inspect the same cargo or informed Belgian customs differently, e.g. British customs has identified cargo for inspection at discharge in Antwerp that was not identified by French customs as requiring inspection at discharge in Antwerp or *vice versa*. However, because the British Customs' risk assessment is the most recent, it is the results from this risk assessment that should be taken into consideration by Belgian customs in determining whether a shipment requires inspection at discharge in Antwerp once the vessel arrives in that port and the shipment has been unloaded and presented to Customs.

3. Time limits

3.1 Is it correct that no vessel departure time from the foreign load port must be included in the ENS? If so, how will it be determined that the ENS was filed no later than 24 hours before loading?

It is correct that vessel departure time from the foreign load port is not a required data element in the ENS. It is also correct that the Customs office of first entry might not be able, solely based on the information provided in the ENS, to determine proper in-time filing. Essentially, compliance with the "no later than 24 hours before commencement of loading" filing deadline is a matter of trust. Should it subsequently be determined that a filing occurred after the deadline, the Community legislation explicitly provides that penalties may be imposed (pursuant to national Customs legislation).

3.2 If bulk cargo is loaded on to a flat rack, which time-limit (24 hours before loading for containerized shipment, or 4 hours before arrival for bulk cargo) would apply?

There are no definitions in the Community legislation of either containerized shipments or other types of cargo. However, the legislation is based on the assumption that any cargo that is not loaded ("stuffed") in to a standard ISO container may be treated as non-containerized cargo and thus be subject to the no later than 4 hours before arrival ENS filing requirement. This would include bulk cargoes loaded on to a flat rack. However, the carrier may – in order to avoid having to file according to different deadlines – include these bulk cargoes in its pre-vessel loading ENS.

4. Alternative 3rd party filing

4.1 How will the carrier coordinate with the forwarder in case of 3rd party filing?

If a forwarder is to file the ENS, the forwarder filing must always be with the carrier's "knowledge and consent" and pursuant to contractual agreements, including for which shipments the forwarder will file; at which point of time ("cut-off time") before commencement of loading the forwarder filing must be made (to ensure that the carrier –

should it not by then have received a MRN for the filing – may contact the forwarder to enquire when, and if, the forwarder will file or whether the carrier should file instead or not load the shipment); duration of the alternative filing arrangement, etc. A carrier entering into such an agreement with a forwarder is advised to exercise care and ensure that its agreement with the forwarder is well understood and documented by both parties.

The carrier would also want to consider including in its agreement with the forwarder an indemnification clause because an omission by the forwarder to file the ENS when it has agreed to do so may result in delays for the vessel and/or the cargo and possible penalties for the carrier, because the carrier is still legally obligated that the filing be made.

The carrier would also want to ensure in any such agreement with a forwarder that the forwarder agrees to include the carrier's EORI number, master bill of lading number, and container number(-s) in its filing in order that the carrier, upon receipt of the MRN for the forwarder filing (which the carrier will receive provided it is IT connected to the Customs office of first entry), may make an annotation in its system that a filing has been made for those shipments and that, therefore, its legal obligation to ensure that a filing has been made has been met.

The Commission's ENS guidelines set out in some detail the steps involved in arranging for an alternative forwarder filing; these guidelines can be accessed at: http://ec.europa.eu/taxation_Customs/resources/documents/Customs/security_amendment/procedures/import_entry_guidelines_en.pdf.

4.2 If a forwarder files the ENS, can the ocean carrier file an amendment to it?

An amendment to an ENS can only be made by the person who lodged the original ENS or its representative. Therefore, only in the unlikely event that the forwarder in its ENS designates the carrier as its representative would the carrier be able to amend the ENS on behalf of the forwarder.

Note: As explained in question 4.1 above, the carrier would want to ensure that the conditions and terms for the alternative forwarder filing are made part of a contractual agreement between the carrier and the forwarder. It would also be advisable in that agreement to explicitly set out that the forwarder will be responsible for lodging any amendments to the originally filed ENS.

4.3 If a forwarder files an ENS with the carrier's knowledge and consent and this carrier receives the corresponding MRN, will the carrier be notified of amendments to the ENS?

Not automatically. As the carrier is not responsible for the accuracy and completeness of the forwarder filing, it would not need to be informed of changes to the ENS made by the forwarder. Most WSC Member lines have earlier indicated that they would not want to be notified of changes made to forwarder ENS filings. However, if a carrier wishes to receive such notifications, it may request the Customs authorities to send it electronically copies of the amendment notifications. (The carrier cannot select which notifications for which forwarder ENS filings it wants to receive -- a request to receive amendment notifications would apply to all forwarder ENS filings that the carrier consents to).

4.4 A forwarder files an ENS for a consolidated container with the knowledge and consent of the carrier. The carrier receives the MRN for the forwarder's ENS filing. Subsequently, the forwarder decides to lodge two ENSs for the same consolidated container. Must the carrier be notified of the new MRNs?

No, the ocean carrier is not expected or required to "police" whether the forwarder has lodged an ENS covering all the shipments in a consolidated container. As long as the carrier receives a single MRN for a forwarder ENS filing, the ocean carrier may regard that single MRN as confirmation that an ENS filing has been made and consequently that the ocean carrier's legal obligation to ensure that ENS are filed for all the shipments it is having carried into the Community has been met.

In the above example, presumably the consolidated box would continue to be tied to a single master bill of lading even if the forwarder amends its original ENS or lodges two new ENSs (the forwarder will have both options). This may result in the issuance of one more MRN for the forwarder filing (the original one plus a new MRN) or in two new MRNs, but both MRNs would in any event be related to the same master bill of lading (which the forwarder must include in its ENS amendment or new filing). The carrier would not need to have all these MRNs for the forwarder's (amended) ENS filing in order to meet its legal obligation to ensure that an ENS filing has been made; one MRN would suffice.

4.5 In a Singapore – Karachi – Rotterdam service, the portion Singapore – Karachi is undertaken by a feeder vessel and the portion Karachi – Rotterdam is undertaken by a main haul vessel. A forwarder has goods loaded in Singapore and issues from Singapore a house bill of lading for those goods (the master bill of lading is made by the carrier); the cargo is relayed at Karachi. According to the contract between the forwarder and the carrier, the forwarder is responsible for lodging ENS for all its shipments being carried by the ocean carrier. Can the forwarder meet its filing obligation by lodging the ENS prior to loading on to the feeder vessel in Singapore?

The EU advance cargo security rules apply to goods entering the Community; they do not apply to goods moved between foreign jurisdictions. The ENS filing requirement therefore applies to the shipments to be loaded on to the main haul vessel in Karachi because it is that vessel that will arrive in the Community. However, this does not prevent the forwarder from lodging the ENS much earlier, e.g. at the time the shipments will be loaded on to the feeder vessel, **provided** that the forwarder has all the information necessary to populate the ENS, including information from the ocean carrier about the time of the commencement of loading on to the main haul vessel and the IMO vessel number and itinerary of that main haul vessel.³

³ There are other data elements that the carrier will need to provide to the forwarder in order to make it possible for the latter to lodge a correct ENS. These data elements are listed in the Commission's Guidelines. (See also Q. 4.1).

5. Feeder traffic

5.1 When is the feeder vessel operator responsible for filing the ENS and when is the ocean carrier responsible for the ENS filing for short sea shipments that are being brought in to the Community?

The answer depends on how and on which type of vessel the short sea shipment is being brought in to the Community:

(1) For short sea shipments brought in to the Community on a feeder vessel, the feeder vessel operator is, as a general rule, responsible for the filling of ENS for all shipments carried on the feeder vessel, including for those shipments it is carrying for the ocean carrier. However, if the ocean carrier has a contractual relationship with the feeder vessel operator that can be characterized as a Vessel Sharing Agreement (VSA) or space or slot charter arrangement and the shipments are moving under a bill of lading issued by the ocean carrier, then the ocean carrier would be the responsible party. However, in this case, the feeder vessel operator may file as a representative on the ocean carrier's behalf.

(2) For short sea shipments brought in to the Community on a main haul vessel, the bill of lading issuing carrier will always be responsible for filing the ENS for the shipments it is having carried on the main haul vessel.

For both (1) and (2), no ENS would be required for sailings between EU ports; an ENS is only required to be lodged at the customs office of first entry in the Community after the vessel comes in from foreign (with the exception of vessels that originate from a Norwegian port). This means that no ENS would ever be required for shipments on a vessel engaged in "pure" intra-Community traffic with no intervening calls at non-EU ports.

5.2 Goods are loaded in India and transshipped in Turkey to be unloaded in Bulgaria. The carriage from Turkey to Bulgaria is done by a 3rd party feeder. There is no vessel sharing or space or slot charter agreement between the ocean carrier and this 3rd party feeder. Who must lodge the ENS?

The ENS must be lodged by the feeder operator. However, the ocean carrier has the possibility of asking for the 3rd party feeder's consent that the ocean carrier itself lodges the ENS for the shipments it is having carried on the feeder vessel.

5.3 An ocean carrier has a vessel calling at a Russian port and the carrier's bill of lading is issued with a Point of Delivery (POD) in Russia but a Final Point of Delivery (FPD) in the Community. If the transportation from the POD to the FPD is done by barge, must the barge operator file the ENS with Customs in the EU port? Alternatively, if the transportation from the Russian POD to the FPD in the Community is done by train or rail, is it the operator of this means of transport who must lodge the ENS?

According to the Community legislation, the person responsible for the lodgement of the ENS is the person who operates the means of transport on or in which the goods are brought into the customs territory of the Community.⁴ Therefore, in the example, the person responsible for lodging the ENS is the barge operator/rail company/truck company. The ocean carrier may, however, ask e.g. for the barge operator's consent that the ocean carrier lodges the ENS for those shipments it is having carried on the barge.

The time-limits for the lodgement of the ENS will depend on the active means of transport, i.e. two (2) hours before arrival at the first EU port/Customs office for the barge and rail, and one (1) hour before arrival at the border for the truck.

6. Diversions

6.1 An ENS was sent to the intended first port in the Community (e.g. Rotterdam) but due to "force majeure", the vessel is diverted to a port in another Member State (e.g. Antwerp) which was not included in the ENS and that now becomes the first port of entry. How is this to be addressed?

Because the actual (Belgian) Customs office of first entry was not included in the original ENS, a so-called "Diversion Request" must be lodged by the vessel operator with the declared (Dutch) Customs office of first entry. The "Diversion Request" can take the same format as the Arrival Notification, i.e. it can either include the "Entry Key" data or include the MRNs for all the ENS lodged for all the shipments carried on the vessel (the choice between the Entry Key and the list of MRNs is left to the vessel operator, not to the Customs administration; see Q 1.1). Based on the "Diversion Request", the declared (Dutch) Customs office of first entry will be able to identify in ICS the risk assessments it made based on the ENS, and if the risk assessments resulted in identifying any risks ("positive risk results"), then these positive risk results (not the entire ENS information) will be transmitted to the actual (Belgian) Customs office of first entry.

6.2 Same question as above 5.1, but the actual first port of entry (Antwerp) was included as a subsequent port in the ENS sent to the declared first port in the Community (Rotterdam). How is this to be addressed?

This is not a case of diversion requiring the lodgement of a "Diversion Request" because Antwerp was listed as a subsequent port in the original ENS. The carrier does not have to re-transmit the ENS to the (Belgian) Customs office of first entry. The (Belgian) Customs office of first entry will already have received any positive risk results from the declared (Dutch) Customs office of first entry in the Community.

In this example, because Antwerp is now the port of first entry in the Community, the vessel operator must lodge an Arrival Notification with Belgian Customs. This Arrival Notification will allow Belgian Customs – in case it has not already heard from Dutch Customs – to query Dutch Customs via ICS about any positive risk results.

⁴ In deep sea maritime traffic, this is held to be the ocean carrier that issues bill of lading for the carriage of the goods into the Community. Thus, in the case of vessel sharing (VSA) or similar contracting arrangements, the obligation to file an ENS lies with that carrier who has contracted, and issued a bill of lading, for the carriage of the goods into the Community on the vessel subject to the arrangement.

6.3 What happens in the case of a cargo diversion if the decision to divert the cargo was made after the first port of call has already been passed? What will Customs in the actual discharge port do regarding any risks identified for the diverted cargo?

If the cargo diversion takes place after the first port of call in the Community, the risk assessment will already have been done. There is no obligation to amend the ENS that is now closed.

The diverted cargo must, upon discharge, be presented to Customs (quite often this is done by the bill of lading issuing carrier) and must, unless declared for a Customs procedure, treatment or use, e.g. free circulation, be summarily declared for temporary storage. The summary declaration for temporary storage must include a reference to the previously lodged ENS, where applicable (see Question 1.3). Customs in the actual discharge port can use this reference “to look up” the previously lodged ENS in the ICS and determine if the Customs office of first entry has identified the goods as being of risk.

6.4 How should amendments to the ENS after a vessel diversion be addressed?

The answer depends on whether the vessel diversion requires the lodgement of a Diversion Request:

(1) The vessel is diverted to a new Customs office of first entry in a Member State not declared in the ENS.

In this situation, a diversion request should be submitted to the originally declared Customs office of first entry. This office must ensure that any identified positive risks are forwarded to the actual Customs office of first entry.

Once a diversion request has been made, no amendments to the ENS are allowed.

This also means that if a shipper - after the Diversion Request has been made - informs the carrier of a change in the shipping instructions that otherwise would have resulted in an amendment to the ENS (e.g. different cargo description or consignee), no amendment to the ENS is possible.

(2) The vessel is diverted to a new Customs office of first entry in a Member State already declared in the ENS.

In this second situation, a diversion request is not required as the Member State responsible for the new actual Customs office of first entry will have already received any positive risk results from the originally declared Customs office of first entry. Nor will the ENS need to be amended to reflect the new actual Customs office of first entry.

However, if a shipper - after the decision to divert the vessel has been made – informs the carrier of a change in the shipping instructions (e.g. different cargo description or consignee), then an amendment to the ENS should be made. The amendment to the ENS should be lodged with the originally declared Customs office of first entry (that also received the original ENS).

6.5 Upon a decision to divert the vessel that requires a diversion request to be made, one or more shippers decide to have their cargo unloaded in the port where the vessel is being diverted to rather than in the port of unloading declared in the original ENS. How is this addressed? How will Customs in the actual discharge port know if goods have been identified as constituting a risk?

This scenario is similar to situation (1) in Question 6.4 above:

The current Commission Guidelines state that if the shipper - after a Diversion Request has been made - decides that the cargo originally bound for the declared Customs office of first entry now is to be unloaded at the actual Customs office of first entry, then an amendment to the ENS is not possible.

As to how Customs in the actual discharge port will know if goods originally scheduled to be discharged in the declared port of first entry have been identified as constituting a risk, the response falls in two parts:

(a) The vessel operator must at arrival at the actual Customs office of first entry lodge an Arrival Notification that will allow Customs there to “call up” in ICS the originally lodged ENS and any positive risks that the originally declared Customs office of first entry may have identified.

(b) The goods originally scheduled for discharge in the declared first port entry but now discharged in the actual first port entry must be included in the arrival manifest; they must also be presented to Customs. These processes should allow Customs to tie the discharged and presented goods with any positive risk results even if the port of discharge is now different from the one declared in the ENS.

7. Amendments to ENS

7.1 What happens if an ENS has been filed but the container is not loaded onto the intended vessel? Will an amendment to the ENS be required?

The answer depends on the specifics of the situation:

If the Customs office of first entry will be the same for the “new” vessel on to which the short shipped cargo is loaded and all the short shipped cargo was covered by the same ENS, (e.g. two containers covered by one ENS and both containers are “rolled”) then there are two options – either file an amendment to the original ENS or lodge a new ENS.

If, however, the short shipped cargo only formed part of the original ENS (e.g. only one of the two containers covered by one ENS is “rolled”) or the actual Customs office of first entry is different from the originally declared, then a new ENS must be lodged for the short shipped goods.

NB: Where a new ENS is lodged, the lodgement must be done no later than 24 hours before commencement of loading, starting a new 24 hour clock (or “window”) for Customs risk assessment where Do Not Load (DNL) messages may be issued.

7.2 How to address shipments covered by a “To Order” bill of lading?

The Community legislation (the Annex 30A data elements) explicitly recognizes “To Order” bills of lading. It clarifies that for such bills of lading no consignee needs to be identified in the ENS. Instead a special code – 10600 – shall be used for the consignee.

If the goods are sold in transit and the carrier is informed by its shipper customer who the (new) consignee is, an amendment to the originally lodged ENS should be filed. The sale of the goods may also result in a new place of unloading; this should also be included in the amendment to the ENS.

NB: The lodgement of an amendment to an ENS will not re-start the 24 hour clock (or “window”) where DNL messages can be issued; if the amendment is made after vessel departure it can, by definition, not result in a DNL.

7.3 Two containers were covered by the same bill of lading and an ENS was lodged for that bill of lading (= two containers). While en route, the port of unloading and/or the consignee changes for either or both of the containers. How is this to be addressed?

The changed information regarding port of unloading and/or the consignee will presumably result in the carrier issuing two new bills of lading, one for each container reflecting the new port of unloading and/or new consignee. These changes should be reported to the Customs office of first entry either by submitting amendments to the original ENS or by lodging two new ENSs (one for each new bill of lading). The carrier would have discretion in choosing which of these two options it would want to pursue; if the former option is chosen then the amendments must include also the MRN for the originally lodged ENS. Because an original ENS was lodged within the pre-vessel loading deadline, and the changes resulting in amending the original ENS or lodging new ENSs were made after vessel departure, the ocean carrier cannot be held to have filed late. However, as discussed in Q. 7.5, the ocean carrier is advised to keep records of its previously lodged ENS, including the MRNs, for a minimum of 200 days after the date and time the original ENS was lodged.

7.4 In cases where the carrier decides to send a new ENS instead of filing an amendment to the existing ENS, will the new ENS result in a new acknowledgement, i.e. a new MRN number?

Yes, because there is a new ENS, a new MRN will be issued. The previously issued MRN number will not be overwritten by the new MRN number, but will automatically be purged from ICS after 200 days. The new ENS is not required to include the MRN for the previously lodged ENS (only amendments to a previously lodged ENS must include the MRN for that ENS).

7.5 If the carrier decides to send a new ENS instead of filing an amendment to the existing ENS, does this new ENS have to be lodged no later than 24 hours before commencement of loading? Will there be consequences for the carrier if it decides to file a new ENS instead of filing an amendment at a point in time later than 24 hours prior to loading?

Instead of amending an ENS, an ocean carrier always has the option of lodging a new ENS.

Lodgment of amendments to an ENS never results in a re-start of the 24 hour “window” for Customs’ risk assessment and the possible issuance of a Do Not Load message because it is the initial declaration that sets the time limits.

Lodgment of a new ENS – if done before vessel departure from the foreign load port - will start a new 24 hour clock (or “window”) for Customs risk assessment where DNL messages may be issued. If the new ENS is lodged after vessel departure, there will not be a re-start of the 24 hour clock (or “window”), and no DNL messages can be issued. The originally lodged ENS will remain in ICS for 200 days before it is purged from the system. Therefore, if upon filing of the new ENS after vessel departure from the foreign load port, the Customs office of first entry comes back to the carrier and claim that the carrier is not in compliance with the filing deadline, the carrier – as long as it is able to produce the MRN (which is date and time stamped) for the originally lodged ENS – can use that MRN to demonstrate that it did file within the deadline.

Carriers are therefore advised to keep records of their previously lodged ENS, including the MRNs, for a minimum of 200 days after the date and time the original ENS was lodged.

8. Do Not Load (DNL) messages

8.1 Is there a penalty if a container is loaded despite a DNL message?

The Community legislation does not include any penalty provisions for situations where the carrier – irrespective of a DNL message – loads the container and brings it to the Community. However, it cannot be excluded that penalties could be issued pursuant to national legislation applicable to the Customs office of first entry that issued the DNL message. In any event, the carrier should expect that the container, subject to the DNL message, will be targeted for Customs inspection and control either in the Customs office of first entry or, at the latest, at discharge and presentation in the Community discharge port with the possibility, if not likelihood, that the container will be denied entry into the Community and the carrier ordered to bring it back to origin. Any container subject to a DNL message should consequently not be loaded in the first place.

8.2 In cases where the risk analysis results in a DNL message, will the declarant receive first a unique MRN as acknowledgement of receipt of the ENS, and then, as a second step, receive the DNL message?

Yes, there will be two separate messages: a MRN number (accompanied by the bill of lading number and the container number) and, if applicable, a DNL (with the same two additional data elements).

8.3 If a shipment has been cleared for load, but a subsequent filed ENS amendment results in a DNL, will the original assigned MRN be cancelled and replaced by another MRN?

The original MRN will stay the same upon filing of the amendments. It will not be replaced by another MRN.

It should be added that a DNL message can only be issued within the 24 hour clock (or “window”) from the date and time of lodgement of the original ENS. Therefore, if the amendment is lodged after the expiration of the 24 hour “window”, it cannot result in the issuance of a DNL message.

8.4 What information will be included in the DNL?

In addition to the MRN for the ENS, the DNL will include the bill of lading number and the container number(-s) as indicated in the ENS.

If the carrier has given its consent that a 3rd party, e.g. a forwarder, lodges the ENS, then the forwarder must in its ENS filing include both its own (house) bill of lading number and the carrier’s (master) bill of lading number, so that the latter number can be included in the DNL in order to allow the carrier to know which shipment is subject to the DNL message and therefore should not be loaded onto the vessel.

8.5 In case an ENS has been lodged on the bill of lading level or even includes multiple bills of lading, how will the DNL messages be sent: on ENS, bill of lading or container level?

This is not regulated by Community legislation. It is possible that a national customs authority could issue a DNL message at the ENS level, thus perhaps covering multiple bills of lading and containers, even if the risk that triggered the DNL applied to only one of the containers.

Lodgment of ENS at the container level would eliminate the risk that multiple low-risk containers might be covered by a DNL, although issuance of DNL messages is expected to be rare.

8.6 In case a DNL has been issued, which processes should be used to have the DNL lifted and the container cleared for loading?

The ICS does not describe the processes to be performed in case of a DNL message in order to have the shipment cleared for loading. This means that it will up to each individual Member State to prescribe. As these situations are expected to be rare, the carrier will want to coordinate a response to any DNL with the Member State customs authority that issued the DNL message.

9. ENS data

9.1 Will the risk assessment be based on a comparison between the ENS data and the BAPLIE plan or manifest data?

There is no Community rule requiring ocean carriers to submit their BAPLIE information to Customs authorities. Nor is there any Community rule regarding comparison of the ENS with the manifest lodged at arrival.

Submission of, and the content of, arrival manifests is – with the exception of acceptable proofs for Community status of goods - currently exclusively regulated by national legislation, not by Community rules. It is possible that national Customs legislation may require that the manifest includes the MRNs, where applicable, for shipments to be discharged in the individual ports. If acceptable to the Customs authorities, the manifest may take the form of the summary declaration for temporary storage (if the ocean carrier is the party presenting the goods to Customs). The summary declaration for temporary storage must include “the particulars” to identify the ENS, where applicable; this could pursuant to national Customs legislation be required to be the MRN (see Question 1.3).

9.2 Can the ENS data be filed either at house bill of lading or master bill of lading level?

The bill of lading issuing ocean carrier is responsible that an ENS filing is made. For its ENS filing, the carrier may use the information available to it in its master bill of lading. The Commission Guidelines confirm that *“the declarant is entitled to base his ENS filing on data provided by its trading or contracting parties, and the declarant would not have to ascertain the accuracy of the data provided to him”*.

A carrier may also consent that another party, e.g. a forwarder, files the ENS instead of the carrier. In this case, the forwarder would use its house bill of lading information to populate the ENS, and would become responsible for the accuracy and completeness of the ENS filing.

9.3 If a forwarder provides to the carrier only a general cargo description of the shipments in a consolidated container, will this be sufficient for the carrier when it lodges the ENS?

Yes, a carrier can only include in its ENS the information “available to it”, i.e. available in the shipping instructions as reflected in the master bill of lading. Therefore, if the forwarder has provided a plain language general cargo description, then the carrier can use that description for inclusion in the carrier’s ENS filing. However, it should be noted that certain plain language cargo descriptions are unacceptable; these are set out in the Commission’s cargo description guidelines that can be accessed at: http://ec.europa.eu/taxation_Customs/resources/documents/Customs/policy_issues/Customs_security/acceptable_goods_description_guidelines_en.pdf.

9.4 An ENS must be lodged for each foreign load port, which means that a MRN will be issued for each ENS lodged from that foreign load port. Earlier loaded shipments which remain on board the vessel in that particular port will not get a new MRN. Then how will Customs in the first port of entry be able to tie all the ENSs together that have been lodged from different foreign load ports and at different filing days and time?

As discussed in Question 1.2., the vessel operator must lodge an Arrival Notification to the Customs office of first entry. Irrespective of whether this Arrival Notification provides the “Entry Key” information or includes all the MRNs for all the shipments on the arriving vessel, Customs in the first port of entry would be able to tie all the ENS together and access in the ICS any positive risk results for those shipments.

9.5 If both the carrier and the forwarder are lodging an ENS for the same shipment, is ICS able to reconcile both information and trace the forwarder's data on the basis of the carrier's bill of lading?

This is not part of the functional specifications for ICS for the simple reason that the Community legislation only contemplates one ENS per shipment to be lodged -- either by the carrier or, with its knowledge and consent, a third party, e.g. a forwarder. However, in cases where dual filings nonetheless occur, customs authorities may decide to use both filings for their risk analysis. Otherwise, they will consider the ENS lodged by the carrier to be the valid one.

9.6 If a vessel is not operated by the bill of lading issuing ocean carrier, which voyage number must be indicated in the ENS: the ocean carrier's voyage number or the vessel operator's voyage number?

The voyage number to be indicated in the ENS should be that of the ocean carrier, because this carrier is the ENS filer (for the shipments for which it has issued its own bill of lading).

9.7 If a new vessel enters a service, is there a requirement for the ocean carrier to provide all the details of the new vessel prior to transmitting the ENS?

There is no such requirement in the Community legislation. The ENS must include the "identity and nationality of the active means of transport crossing the border". For ocean going vessels, this equates to provision of the IMO vessel number.

9.8 When a vessel leaves the Community for a non-EU port and then returns to a Community port, a new ENS must be lodged. Does this ENS have to include the MRN from the original transmission?

No. The new ENS will result in a new MRN.
(The only time when a reference to the original MRN is needed is when an ENS is amended).

9.9 The ENS data require information on the first and subsequent Customs offices of entry. Annex 30A indicates that the first Customs office of entry ("*first place of arrival*") must "*adhere to the following pattern: UN/LOCODE (an...5) + national code (an...6)*", i.e. up to 11 digits. The same Annex 30A indicates that the subsequent Customs offices of entry must "*adhere to the pattern provided in Annex 38 for SAD Box 29 for the Customs office of entry*". The code for this pattern is currently composed of up to 8 digits.

Issue # 1: How and where will the information be available for each EU Customs office?

Ocean carriers are advised – both for Customs offices of first entry and for subsequent Customs offices - to always use the codes provided in the list of all Community Customs offices and their attendant codes (up to 8 digits) on the TAXUD website at the following address: http://ec.europa.eu/taxation_customs/dds/csrdquer_en.htm.

The list is currently incomplete as many Member States yet have to register their Customs offices of entry. However, the Commission has undertaken to ensure that the list of codes for all Customs offices of entry for all Member States, organized by transportation mode, will be available in the above electronic list before the ENS filing becomes mandatory on December 31, 2010.

Issue # 2: If certain Member States do not use the UN codes for places and ports (UN/LOCODE), are they obliged to accept ENS transmissions that include such UN codes?

No, the Member States are not obliged to accept the UN codes, and ENS that includes such codes may therefore be rejected.

Ocean carriers are advised to always use the codes provided in the list, maintained by the Commission, discussed in Issue # 1 above.

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