

Proposed Rulemaking of 15CFR Part 30 of the Foreign Trade Regulations

Comments by Qantas Airways Limited (Qantas) on proposed rule.

Introduction

Qantas welcomes the opportunity to comment on this proposed rulemaking. We acknowledge the objectives it sets out to achieve in detecting and preventing the export of certain items by unauthorised parties to unauthorised destinations or end users. Such objectives however must not adversely impact legitimate parties to the supply chain and responsibilities of such parties must be clearly defined.

Qantas is an Australian public listed company and has operated regular passenger services for over 80 years. The company's main business is the transportation of passengers and freight. To support the operation, Qantas sources in excess of 10,000 consignments per annum from its many vendors located in the United States.

General comments

Whilst the various definitions presented in this rulemaking are concise in the context of the majority of shipping scenarios, they become somewhat ambiguous in respect to other scenarios of a more complex yet realistic nature.

To illustrate, Qantas, like several other foreign carriers enter into agreements with many US vendors for the supply of spare parts and equipment to Australia. Where the carrier operates scheduled services from a port within the US, quite often it is cost effective for the carrier to uplift such cargoes on its own aircraft rather than bear the cost of commercial freight. Qantas operates in such a way from the port of Los Angeles, California.

In such cases the goods are typically bought under a "Ex Works" term where the goods are delivered to the port of uplift and subsequently uplifted by the carrier on their aircraft. Accordingly the comments below will primarily be within the context of this shipping arrangement.

Specific Comments

Definitions

There is significant conjecture as to who is the USPPI under this shipping scenario. Reference is made to the definition of USPPI contained in Section 30.1; namely " The person or legal entity in the US that receives the primary benefit, monetary or otherwise, of the export transaction. Generally, that person or entity is the US seller, manufacturer,

Other US vendors maintain that the carrier is the USPPI as the sale is a domestic sale. In such cases Qantas would appear as the USPPI, which we believe is clearly not the intention of the proposed rule.

Option 4 filing

Again in the context of carriers uplifting goods acquired in the US, reference is made to Section 30.3 (b) (2) wherein it states foreign entities shall be listed as the USPPI if it is in the US when items are purchased or obtained for export. If that is deemed to be the case in our instance (we consider it otherwise) then can the carrier listed as the USPPI, participate in Option 4 filing as a USPPI.

We believe consideration should be given to carriers in such a case.

Amendments to the AES

The proposed rule requires the USPPI or their authorised agents to transmit any changes to the AES as soon as they are known.

This is not operationally efficient as carriers, freight forwarders etc do not as a matter of course notify parties where changes occur in the uplift of cargo. For example, freight booked does not necessarily depart on the scheduled flights for a variety of reasons such as cancelled flights or aircraft overweight etc.

This requirement will add another task to the forwarding agent/ carrier that we believe is not essential for the Bureau of Census to reach its objective. We suggest to the Bureau that in respect to freight not being uplifted as reported that a period of time be established and where that is exceeded then amendments to the EEI be reported. The fact that Carriers manifest cargo and that this is available or in cases reported to CBP supports this concept.

Fines

We believe a series of sanctions should be implemented and applied to responsible parties as an incentive to comply as a precursor to imposing penalties. Such sanctions may be include increased surveillance or audit.

The penalty provisions are not clear in respect to authorised agents acting on behalf of their principals. Furthermore what constitutes a violation, for example if an agent classifies a commodity correct to six digits but errs to ten digits, is that considered a violation.

We believe clearer guidelines are required for responsible parties in respect to this provision.

Conclusion

or order party, or the foreign entity while in the US when purchasing or obtaining the goods for export".

"Primary Benefit" is defined in Section 30.1 as "receiving the greatest satisfaction from an export trade negotiation; usually monetary".

In discussions with many of our key US vendors to date, their interpretation of this definition is such that the foreign buyer (Qantas) is the prime beneficiary as they are the recipients of the goods and accordingly are the USPPi and are the responsible party for filing the EEI. This in our opinion is not the intent of the proposed rule and should the Bureau of Census share this view, then the definition must be amended to provide clarity or be supported with explanatory notes.

The second part of the definition deals with foreign entities while in the US. Clarification is sought in our instance as to whether the foreign carrier is considered to be a foreign entity while in the US when purchasing or obtaining the goods for export and subsequently deemed to be the FPPI responsible for filing. What consideration is given if the foreign carrier is registered in the US to conduct business of a general nature but that business does not extend to the "purchasing or obtaining the goods for export". Furthermore, what if goods are ordered from the foreign country and payment is transferred from that country to the US vendor.

We believe the intention of this part of the definition is intended for circumstances where a FPPI enters into a contract of sale whilst in the US, acquires such goods and exports them from the US. This is distinct from where goods are ordered from the foreign country.

Accordingly we seek clearer guidelines on who in fact is considered the USPPi and thus responsible for the filing of the EEI. Such conjecture between principal parties in interest is already prevalent and this does not provide stakeholders with any degree of confidence in meeting the proposed deadlines.

INCOTERMS

It appears the proposed rule does not take into consideration the use of INCOTERMS in respect to identifying the party responsible for the filing of the EEI. Parties to a contract for the sale of goods in international trade rely on INCOTERMS to clearly identify each party's responsibilities. This provides parties with confidence and predicability and where proposed rules conflict with INCOTERMS, confusion inevitably will result.

To explain, the INCOTERM, "Ex Works" specifically states "the buyer must obtain at his own risk and expense any export and import licence or other official authorisation and carry out, where applicable, all customs formalities for the export of the goods." In contrast some US vendors who are clearly the USPPi are invoking the above INCOTERM as a defence to being the responsible party to file under this rule.

Furthermore several US vendors are also claiming that an Ex Works contract is in fact a routed export transaction and therefore the FPPI is responsible for filing. This is not just limited to the shipping scenario we have described above but it extends to shipments where freight is shipped commercially.

Qantas recognises the intent of this rulemaking but we seek clarification on a number of provisions and definitions and how they apply to principal parties in interest, particularly in respect to the shipping arrangement identified in this submission.

Where parties are uncertain of their responsibilities, business continuity and predicability will be jeopardised. Parties need to prepare and implement a variety of processes and procedures such as the AES application, training and certification of staff, agency agreements, contract revisions and obtaining Power of Attorney's or written authorisations. This takes time and confusion does not aid to the process.

The Bureau of the Census must recognise this when determining an effective date. Qantas hopes the Bureau will take into consideration the points raised in this submission when developing a final rule.

Should you have any questions in respect to this submission please feel free to contact me in due course.

Yours sincerely

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