

Minding Your Business - Trade Data Confidentiality

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Companies go to great lengths to keep their commercial activities confidential. Who could blame them? They make sizeable investments in their products and supply chain strategies. Sharing proprietary information could undermine their businesses. If you asked a company the source of a specific import shipment you might get a curt response to MYOB. After all, why should they give away a proprietary resource for free?

When it comes to importing and exporting, however, a considerable amount of what businesses might consider to be confidential information is publicly available.

You would think that the regulations governing importing and exporting would support data confidentiality. To a certain degree you would be accurate in this assumption. CBP and Census are not disseminating the contents of your commercial invoices, customs entries or electronic export information filings. These confidential commercial data are deemed to be exempted from Freedom of Information Act (FOIA) requests. As such, your company's purchase and sales prices are not available to the public. (See 19 CFR §103.31 and §103.35. See also 15 CFR §30.55 and §30.60.)

The regulations, however, do not screen all data from the public record. Routinely available for review are inward and outward shipping manifests. CBP regulations, 19 CFR §103.31, provide for access to these manifests. The manifests themselves are only available to the press or to the importers and exporters involved in the shipments or to their authorized agents, but not to the general public. The data gleaned from those manifests, however, can be made publicly available. The reason for data availability is, of course, FOIA.

What information is available?

For outward or export manifests, the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. Commercial or financial information, such as the names of the consignees, and marks and numbers may not be copied from outward manifests or any other papers.

For inward or imports the manifests are available subject to the above mentioned restrictions. CBP also makes the data available to the wider public and includes the following:

1. Carrier code.
2. Vessel country code.
3. Vessel name.
4. Voyage number.
5. District/port of unloading.
6. Estimated arrival date.
7. Bill of lading number.
8. Foreign port of lading.
9. Manifest quantity.
10. Manifest units.
11. Weight.
12. Weight unit.
13. Shipper name. (1)

14. Shipper address. (1)
15. Consignee name. (1)
16. Consignee address. (1)
17. Notify party name. (1)
18. Notify party address. (1)
19. Piece count.
20. Description of goods.
21. Container number.
22. Seal number.

As you can see, for both inward and outward manifests, the shipper information is made public and for inward manifests the consignee and notify party are also made available along with origin, destination, product description and quantity.

So? We have nothing to hide!

That may be so, but do you really want the world to know this level of detail about your business? Think about the amount of intelligence that is to be gained just by knowing the origins and destinations of cargo. Exporters may be exposing success in a certain market. Importers might be sharing supplier or customer relationships. Parties interested in understanding logistics partner relationships and distribution strategies also have much to learn.

With an increased focus on enforcement of evasion of anti-dumping and countervailing duties, it is easier for interested parties to identify importers that have business relationships with shippers or that import commodities from countries that fall within the scope of AD/CVD orders. That information could facilitate the filing of a claim of AD/CVD evasion under the newly created CBP regulations.

Even if the details are incomplete, it doesn't take much additional research to deduce what might be considered confidential trade information.

What can a business do to regain confidentiality?

Exporters:

A shipper may request confidential treatment by Customs of the shipper's name and address contained in an outward manifest. To do so the shipper or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification must include the shipper's Internal Revenue Service Employer Number, if available.

Importers/Consignees:

Likewise an importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee. To do so an importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification claiming confidential treatment of its name and address. An importer or consignee may file a certification requesting confidentiality for all its shippers including notify parties. The end result is that the data elements followed by the number (1) in the above list will be excluded from any manifest data.

CBP has provided contact information at its website for making confidentiality requests. At time of publication the request may be made as follows:

Email: vesselmanifestconfidentiality@cbp.dhs.gov

Fax: (202)325-0154

Mail: U.S. Customs and Border Protection; 90 K Street, N.E.; 10th Floor; Washington D.C. 20229-1177

Additional information regarding manifest confidentiality may be found at the CBP website:

https://help.cbp.gov/app/answers/detail/a_id/285/~importers---confidential-treatment-of-vessel-manifest-data or within 19 CFR §103.31.

Two Year Limitation

The confidential protection is valid for 2 years, after which a renewal is required. CBP recommends the trade allow 60-90 days for processing of original applications and renewals.

Mind Your Business

While the request for confidentiality does not prevent all manifest data from public scrutiny it can contribute to helping you mind your company's business.