VENABLE® LLP

International Trade Alert

December 28, 2012

ILA-USMX Contract Extended 30 Days

AUTHORS

Ashley W. Craig
William H. Devaney
Michael J. Volpe
Ariel S. Wolf
Amanda C. Blunt

RELATED PRACTICES

International Trade and Customs

ARCHIVES

2012 2008 2004
2011 2007 2003
2010 2006 2002
2009 2005

The International Longshoremen's Association (ILA) and the United States Maritime Alliance (USMX) agreed on a 30-day extension of the current coast-wide master contract, temporarily shielding East and Gulf Coast ports from the threat of labor-related disruptions until midnight on January 28, 2013. The extension was brokered by federal mediators after the parties could not find common ground on issues such as container royalties and guaranteed hours. ILA President Harold Daggett was recently authorized by ILA delegates to call a strike if negotiations fail.

An ILA strike will disrupt U.S. export and import shipments of most products, with collateral effects at West Coast ports and a severe impact on the U.S. economy.

Which sectors would a strike affect?

An ILA strike would primarily affect container and roll-on, roll-off cargo covered by the ILA-USMX master contract.

- The ILA would continue to work on shipping not covered by the master contract, including break-bulk cargo and cruise lines, as well as exempt shipping of military and perishable cargo.

Who will bear the costs of increased port congestion?

Most carriers have already published new port congestion surcharges that would be triggered by a strike, consistent with the 30-day tariff notice requirement in 46 CFR § 520.8.

- A majority of the surcharges range from USD 800 for 20-foot standard containers to USD 1266 for 45-foot high cube containers. Carriers could still elect to waive the surcharges by contract or agreement.
- In the event of a strike, carriers may also invoke force majeure provisions in their bills of lading to avoid non-performance penalties.

Some shippers plan to divert cargo to the West Coast, which is controlled by a different union, the International Longshore and Warehouse Union (ILWU).

Can the government intervene to prevent a strike?

Yes. If an ILA strike disrupts port operations, President Obama may invoke national emergency provisions in the Taft-Hartley Act. It was last invoked by President Bush in 2002 when an ILWU lockout closed West Coast ports for 10 days, leading to financial losses of up to $2 billion per day.

- The President could appoint a board of inquiry to investigate facts and file a public report. The President may then direct the Attorney General to petition a federal district court for an injunction enjoining the strike.
- If the court holds that the strike "will imperil the national health or safety," it can enjoin the strike by injunction and related orders, after an 80-day "cooling off" period.

This week, Florida Governor Rick Scott called on the President to intervene in the event of a work stoppage, and on December 27, a White House spokesman announced that the Obama Administration was closely monitoring the dispute.

*****

Venable is actively involved in the situation on behalf of several clients and is ready to provide updates and share practical advice on preparing to mitigate the impacts of a strike. If you have any questions, please contact the authors listed in the left rail or any members of **Venable's International Trade and Customs Group**.