



## International Business & Trade Law Alert

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### Are You Ready For The New Customs 10+2 Importer and Carrier Filing Requirements?

On January 26, 2010, U.S. importers and ocean carriers must be in full compliance with the new Customs and Border Protection (CBP) rules on Importer Security Filings (ISFs),<sup>1</sup> commonly known as the 10+2 initiative. Numerous shipments, carrier companies, and importers will be affected by the new rules. Affected companies should make arrangements now with business partners to ensure compliance by January 2010.

The purpose of the 10+2 initiative is to allow CBP to efficiently identify high-risk shipments so that it can ensure cargo safety and security. The "10+2" terminology stems from the 12 pieces of additional data required by the new rules to be submitted to CBP. Importers are required to submit 10 additional data elements to the carrier about U.S.-bound cargo 24 hours before loading the cargo aboard the vessel *at the foreign port*. Carriers are required to submit two additional data elements.

The 10 additional importer data elements include:

- (1) Manufacturer (or supplier) name & address;
- (2) Seller name & address;
- (3) Buyer name & address;
- (4) Ship-to name & address;
- (5) Container stuffing location;
- (6) Consolidator name & address;
- (7) Importer record identification number (IRS, EIN, SSN, or CBP assigned number);
- (8) Consignee number (IRS, EIN, SSN, or CBP assigned number);
- (9) Country of origin; and
- (10) Commodity Harmonized Tariff Schedule (HTS) number.

All information must be submitted electronically through ISFs via the Automated Broker Interface (ABI) or Automated Manifest System (AMS). Importers not using brokers will need to apply for access with CBP.

Ocean carriers must transmit via AMS, secure file transfer protocol, or e-mail the following two pieces of information:

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#### (Footnotes)

<sup>1</sup> Department of Homeland Security, Bureau of Customs and Border Protection, Importer Security Filing and Additional Carrier Requirements, 73 Fed. Reg. 71730 (Nov. 25, 2008) ("CBP Final Rule").

(1) Vessel stow plan to indicate the location of each container on the ocean vessel no later than 48 hours after the carrier's departure from the last foreign port; and,

(2) a container status message (CSM) with detailed information on the movement and status change of a container as it travels through the supply chain, no later than 24 hours after the message is entered into the carrier's equipment tracking system.

Transit cargo (e.g., foreign cargo remaining on board (FROB)) requires electronic ISFs with fewer elements:

- (1) Booking party name & address;
- (2) Foreign port of unloading;
- (3) Place of delivery;
- (4) Ship-to party name & address; and
- (5) HTS number.

Bulk cargo is exempt from ISF requirements. Break-bulk cargo exempt from the timing requirements of the 24-hour rule is also exempt from ISF timing requirements. Containerized bulk shipments are not exempt.

CBP will show restraint in enforcing the rules, taking into account difficulties that importers may face in complying with them, so long as importers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rules. This CBP "lax enforcement" policy will last for 12 months after the effective date of the rules, ending on January 26, 2010 — the Flexible Enforcement Period. During this period, CBP promises not to issue "do not load" (DNL) messages simply for noncompliance with ISF requirements but reserves its right to take enforcement action if it believes cargo presents a potential security and safety risk<sup>2</sup>. Upon expiration of the flexible enforcement period, CBP may issue DNL messages and other penalties for each untimely, incomplete or inaccurate ISF.<sup>3</sup>

In response to industry concerns regarding the ability to comply with the rules, CBP decided to be flexible with six ISF elements. Information on manufacturer/supplier name, address, ship-to party, country of origin and HTS numbers may be submitted initially by importers based on facts available at the time but must be updated as soon as more precise information is available. CBP also made accommodations with respect to the timing of filing of two ISF elements. Container stuffing location and consolidator (stuffer) name/address may be filed by the importer as soon as possible but no later than 24 hours before U.S. arrival.

Many U.S. companies will have no option but to change the way they do business and gather information about their imports. CBP and the industry will have a better idea of the difficulties ahead after an initial phase of implementation. It is not realistic to assume that the majority of companies will be in compliance while the rules are in effect but not enforceable. There is no doubt that it is the right time for companies to start planning and making logistical changes to be ready for the 10+2 initiative by January 2010.

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#### (Footnotes)

<sup>2</sup> Id. p. 22.

<sup>3</sup> Id. p. 23.