



International Business & Trade Law Alert

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U.S. Customs and Border Protection Prepares to Begin Liquidated Damages Phase of Importer Security Filing Starting July 9, 2013

On Jan. 26, 2009, the interim final rule titled Importer Security Filing (ISF) and Additional Carrier Requirements, commonly known as the 10+2 rule, went into effect. This rule requires importers and carriers to submit certain advance cargo information to the U.S. Customs and Border Protection (CBP) before bringing the cargo into the United States by vessel. The information submitted through an ISF improves CBP ability to identify high-risk shipments to prevent smuggling and ensure cargo safety and security.

To provide importers sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP agreed not to enforce the 10+2 rule with penalties during a transition period, from Jan. 26, 2009 to July 8, 2013. Rather than issuing monetary penalties, CBP currently uses manifest holds and nonintrusive inspections to enforce the 10+2 rule. During this transition period, CBP exercised restraint in enforcing the new 10+2 rule with penalties as long as importers made a good faith effort and satisfactory progress toward compliance.

On June 7, 2013, CBP announced that it is making preparations to begin enforcing the 10+2 rule with penalties under the Liquidated Damages Phase of the 10+2 rule enforcement process, which is scheduled to take effect **July 9, 2013**.

What Are the Effects of the Liquidated Damages Phase?

For the purposes of the 10+2 rule, the term "liquidated damages" refers to a penalty secured by a bond. Under the Liquidated Damages Phase, CBP may issue liquidated damages of \$5,000 per violation for the submission of an inaccurate, incomplete or untimely filing. CBP may withhold the release or transfer of cargo to the United States if an ISF has not been filed.

The 10+2 rule vessel stow plan requirement also mandates that carriers submit to CBP a vessel stow plan containing standard information relating to the vessel and each container laden on the vessel destined to the United States no later than 48 hours after the carrier's departure from the last foreign port. For carrier violations of this requirement, CBP may refuse to grant a permit to unload merchandise. Additionally, noncompliant cargo could be subject to further inspection on arrival.



When submitting a vessel stow plan, carriers must include the following standard information.

With regard to the vessel:

- Vessel name — including international maritime organization (IMO) number
- Vessel operator
- Voyage number

With regard to *each container*:

- Container operator
- Equipment number
- Equipment size and type as well as stow position
- Hazmat code, if applicable
- Port of lading
- Port of discharge

Who will be affected?

The Liquidated Damages Phase of the 10+2 rule enforcement action will apply to *all importers and carriers who fail to submit certain advance cargo information pertaining to cargo brought into the United States by vessel*. The requirement to file an ISF only applies to cargo arriving in the United States by vessel. This requirement does not apply to cargo arriving to the United States by other modes of transportation.

The enforcement actions will not apply to ISFs required for shipments consisting entirely of foreign cargo remaining on board (FROB) and goods intended to be transported in-bond as an immediate exportation (IE) or as transportation and exportation (T&E). These ISFs consist of five data elements:

- **Booking party name and address:** Name and address of the party who initiates the reservation of the cargo scope for the shipment.
- **Ship-to party:** Name and address of the first deliver-to-party scheduled to physically receive the goods after the goods have been released from customs custody.
- **Commodity HTS-6 number:** Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the six-digit level.
- **Foreign Port of Unlading:** Port code for the foreign port of unlading at the intended final destination. CBP will accept United Nations Location (UN LOC) codes and the Bureau of Census Schedule K codes.
- **Place of Delivery:** City code for the place of delivery. UN LOC codes and the Bureau of Census Schedule K codes are acceptable.

Who is responsible for the filing?

Under the 10+2 rule, before merchandise arriving by vessel can be imported into the United States, the importer, or its agent — e.g., licensed customs broker — must electronically submit certain advance cargo information to CBP in the form of an ISF. The importer is the party causing the goods to arrive to a United States port by vessel. Generally, the importer will be the goods' owner, purchaser, consignee or agent such as a licensed customs broker.

However, for FROB, the importer is the carrier. For IE and T&E in-bond shipments, and goods to be delivered to a foreign trade zone (FTZ), the importer is the party filing the IE, T&E or FTZ documentation.

For more information about how and what to file, contact Les Glick at (202) 778-3022 or lglick@porterwright.com.