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## **Information on the Importer's Security Filing** **AKA "10 + 2"**

U.S. Customs and Border Protection (CBP) have published their new regulations on the Importer Security Filing (ISF) regulations, also known as "10 + 2". The new law is effective January 26<sup>th</sup>, 2009.

In order to assist our clients, this newsletter will explain the new regulation and the steps needed to comply with this new regulation. The new regulations only implies to ocean import shipments, you **MUST** have your shippers furnish you/us with the requested information prior to the shipment being laden on board the exporting vessel. Again, the new regulations only affect ocean import shipments.

### **Who is Responsible for Making Sure the Importer Security is Filed?**

The importer is responsible for making sure an Importer Security Filing was filed in a correct and timely manner. U.S. Customs and Border Protection believes that the importer has control over who the supplier is and can control the flow of information and data. U.S. Customs and Border Protection can issue fines and penalties against the importer; but, they have little control over the foreign shipper. We can assist you in the Importer Security Filing but, like the filing of the U.S. customs entry, the ultimate responsibility falls on you, the importer.

### **Who Can File the ISF?**

Only the importer or the importer's "authorized agent" can file the Importer Security Filing. If an agent files the ISF, the agent must have a valid Power of Attorney (POA) from the importer on file. The ISF filer must have a customs bond on file with U.S. Customs and Border Protection. Foreign suppliers and overseas freight forwarders usually do not have a customs bond or access into U.S. Customs and Border Protection's computers to do the filing.

The ISF filer must file the data through either ABI (the Automated Broker Interface) or AMS (the Automated Manifest System). If changes need to be made prior to the cargo arrival in the ISF, the ISF must be amended. Only the original ISF filer can amend the ISF; so, if an ISF is filed by someone overseas and it needs correcting, the importer will need to contact the ISF filer to have the correction made.

Since Trans Pacific Logistics has a customs Power of Attorney from your Company, we can file the ISF on your behalf. If you have a Continuous Customs Bond, we can use your customs bond for the filing. If you do not have a Continuous Customs Bond, we can write a customs bond on your behalf.

A key required ISF data elements by the CBP is "Ship To" party, the party that receives the shipment immediately after customs entry. If Trans Pacific Logistics files the ISF on your behalf, the overseas supplier will not know where you are shipping your imported cargo and who you are selling it to. If we file the ISF on

your behalf, we can also compare the information filed on the ISF to the customs entry to make sure that both declarations agree, thus avoid possible customs problems later.

### **Confidentiality**

Unlike manifest data which can be retrieved from CBP under the Freedom of Information Act (FOIA), the ISF transmission is considered confidential business information which would be exempt from public disclosure by the government under the FOIA.

Whereas licensed customs brokers are prohibited by regulation from disclosing client information, this prohibition does not extend to other parties who may be authorized to make the ISF. Importers should carefully consider who will be given access to this data, how they will control the use of this information and determine whether appropriate safeguards can be put into place through the use of enforceable legal agreements in order to keep this information confidential.

### **Required Customs Bond**

The ISF filer must have a customs bond on file with U.S. Customs and Border Protection. Many of our ocean import clients have annual Continuous Bonds on file with U.S. Customs and Border Protection. The surety companies have modified their continuous bonds to cover the ISF filing. For importers who do not have a Continuous Bond, we strongly are suggesting that all importers have a Continuous Bond. If you would like a Continuous Bond, we can send you a Bond Application Form and write the bond on your behalf.

### **When is the Data Filed?**

The Importer Security Filing (ISF) is only required for ocean import shipments arriving by vessel into the United States. It is required to be filed with U.S. Customs and Border Protection at least 24 hours prior to cargo lading on board the exporting vessel at the overseas port of lading. CBP will not issue a "Do Not Load" message to the exporting carrier if an ISF has not been filed. This means cargo could be loaded in violation of the law and the importer would face a customs penalty on cargo arriving in the U.S. where an ISF was not filed or where it was filed late.

Because the ISF must be filed at least 24 hours prior to lading, we will need the information from you or your supplier a lot earlier in order to file the ISF on your behalf. With time and date differences, holidays, vacations and workloads, we should receive the information at least several working days prior to lading.

### **Penalty Amounts**

The penalty for not filing an ISF, or filing a late ISF, is \$5,000 per bill of lading. U.S. Customs and Border Protection have said that they will not issue penalties to importers for non-filing, or late filing, for at least one year. U.S. Customs and Border Protection do expect that importers will obtain the information for the filing and will try to have the filings made on their behalf as soon as possible. U.S. Customs and Border Protection have said that they will mitigate any future penalties, an importer may have, based on the importer's past record of trying to furnish timely and correct ISFs before Customs goes into the penalty phase.

### **What Data Elements Are Required & Who Furnishes Them?**

10 data elements are required from the importer and 2 data elements are required from the ocean carrier. For firm names and addresses, CBP will accept Dunns (Dunn & Bradstreet) numbers for both domestic and overseas firms.

For the **Bill Of Lading #**. The lowest Bill issued, such as House Bill Of Lading is required.

The ocean bill of lading number on the house bill of lading level or, if there is no house bill of lading, the vessel carrier's bill of lading number must be furnished. It is the "control" number to tie the ISF, the shipment and the customs entry together. The bill of lading number used must be the lowest level bill of lading number for the shipment.

**Here are the 10 data elements that are required.**

1. **Seller.** Name and address of the last known entity by whom the goods are sold or agreed to be sold.
2. **Buyer.** Name and address of the last known entity to whom the goods are sold or agreed to be sold.
3. **Importer of record identification number.** Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation.
4. **Consignee number(s).** IRS number, EIN, SSN, or CBP assigned number of the individual(s) or firm(s) in the U.S. on whose account the merchandise is shipped.
5. **Manufacturer (or supplier).** Name and address of the entity that last manufactures, assembles, produces, or grows the commodity or name and address of the party supplying the finished goods in the country from which the goods are leaving. CBP states that it will not accept the current MID as an alternative to the complete name and address of the manufacturer.
6. **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.
7. **Country of origin.** Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the U.S.
8. **Commodity HTS number.** Duty/statistical reporting number under which the article is classified in the HTS. The HTS number must be provided to the six-digit level, but may be provided up to the 10-digit level.
9. **Container stuffing location.** Name and address(es) of the physical location(s) where the goods were stuffed into the container.
10. **Consolidator (stuffer).** Name and address of the party who stuffed the container or arranged for the stuffing of the container.

In the case of full container loads, if the containers are stuffed by the shipper, the shipper would be the "Consolidator" and where the container is loaded would be the "Container stuffing location". Both would need to appear on the documents with their name and address. You, and we, can not assume that a full container was stuffed by the shipper or that the stuffing was done at the shipper's business location. Many shippers use independent warehouses.

**Here are the 2 data elements that are required by the carrier**

1. Vessel stow plan will be provided by the Ocean Carrier.
2. Container status messages will be provided by the Ocean Carrier.

For a transitional period, CBP will accept the Container Stuffing Location and Consolidator prior to arrival of the shipment.

**Importer Action Required: What you need to start doing.**

Importers immediately need to advise their overseas sellers/shippers that this information must be added on to the commercial invoice or packing list, so the information will be available for filing. And, shippers will need to be advised that they must furnish you, the importer, with the information and documents much earlier in the transaction. At least 5 days prior to lading.

Shippers/sellers will need to issue the commercial invoices to the importer a week or two in advance of the planned shipment date. Importers and customs brokers will need to receive the documents far in advance of the vessel loading so that there is time to file the information in advance of the 24 hours prior to loading.

Sellers/shippers will need to know who is consolidating their freight and where it is being consolidated, providing their name and address. If the consolidators they are using co-load with a "master loader", the master loader's name and address are required to be reported to CBP. The "Consolidator" is defined as "...the party who stuffed the container or arranged for the stuffing of the container."

Normally, ocean carriers will not issue ocean bills of lading until the cargo is loaded/laden on board the exporting vessel. Ocean carriers will have to issue bill of lading numbers much sooner to the shipper, in order for the shippers to be able to file the ISF information. Shippers and importers can not wait until the cargo is loaded and obtain the onboard bills of lading. Once the shipment has been loaded, unless the ISF was filed 24 hours prior to loading, the shipment is subject to customs penalties of \$5,000 per bill of lading.

If the seller is the same as the manufacturer, have the seller state that on the commercial invoice or packing list. The commercial invoice should already include the name of the country of origin; but, if it does not, make sure the seller adds it on to the commercial invoice.

Normally the buyer and the importer are the same party. We already have your firm's name and address and importer number. If you are the importer of record, but are not the buyer, please let us know.

And we already know, in most cases, where the "Ship To" address is, from your prior importations. The "Ship to" party is defined as the first party the shipment is shipped to immediately after customs entry. If you ship to various locations after customs entry you will need to let us know.

Since we have been working with many of our importing companies, we have some of the data elements and the additional elements that we might need are the "Bill of lading number", "Consolidator" and "Stuffing location".

### **What Trans Pacific Logistics Can Do For You**

Provided we receive the information in a timely manner, we can file the Importer Security Filing on your behalf. Your information is confidential and secure with us. If there are changes that need to be made, we can amend the ISF filing for you. We can make sure that the Importer Security Filing information agrees with the declarations made on the customs entry. We know the customs classifications on your products. We have an experienced trained staff to assist you.

If you need information faster and better communications with your suppliers, our software vendor has a secure web based Internet program that you can use with your suppliers for filing ISF.

### **GOOD NEWS.**

#### **Flexible Enforcement Period Until January 26, 2010**

In order to provide the trade 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 states that it will show restraint in enforcing the interim final rule, taking into account difficulties that importers may face in complying with the rule, as long as importers are making satisfactory progress toward compliance and are

making a good faith effort to comply with the rule to the extent of their current ability. This policy will last for twelve months after the effective date (i.e., until approximately January 26, 2010) and will apply to all aspects of the filing rule.

CBP stated that it expects importers beginning January 26, 2009 to start make a good faith effort to comply with the interim final rule to the extent of their current ability, and that the delayed compliance period will be used by CBP to help the trade achieve full compliance.

Effective January 26, 2010 enforcement will start with penalties

Beginning January 26, 2009 for a one year period, CBP will monitor all ISF submissions for timeliness, accuracy, and completeness and will work with any non-complying ISF filer to help them adhere to the new requirements.

CBP will be providing filers with "performance report cards" that could provide feedback to importers.

### **Summing up.**

We believe that the above outline of the customs regulations and program will answer most, or all, of your questions. If you have additional questions you can contact us at [gary.dorian@tplusa.com](mailto:gary.dorian@tplusa.com) or [darrell.norman@tplusa.com](mailto:darrell.norman@tplusa.com) with your questions and we will respond back to you. In addition, the U.S. Customs and Border Protection have additional information on their web site at [www.cbp.gov](http://www.cbp.gov).

Sincerely  
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