

December 2009

Contacts

Washington DC Office

1900 K Street, NW
Washington, DC 20006-1109

[Douglas J. Heffner](#)

(202) 419-2014
dheffner@hunton.com

[William A. Silverman](#)

(202) 419-2013
wsilverman@hunton.com

[Richard P. Ferrin](#)

(202) 419-2012
rferrin@hunton.com

[Eric L. "Rick" Johnson*](#)

(202) 955-1639
ejohnson@hunton.com

*Not an Attorney

New U.S. Customs Rules Set to Become Compulsory for Importers of Non-Bulk Merchandise

Importer Security Filing ("10+2")

Companies that import non-bulk merchandise via ocean vessels need to be aware of new rules that are set to become compulsory, beginning **January 26, 2010**. While companies in this category likely are generally aware of the new rules, enforcement has been delayed since the rules went into effect in early 2009, to allow industry the time to comply with the new requirements. According to the U.S. Customs and Border Protection ("CBP") website, failure to comply with the new rules could ultimately result in monetary penalties (up to \$5,000), increased inspections and delay of cargo.

Background

On January 26, 2009, the Importer Security Filing and Additional Carrier Requirements (commonly known as "10+2") went into effect. Since that time, importers have been charged with making a good-faith effort to meet the additional requirements under 10+2. The one-year "flexible enforcement" period, however, concludes next month, and beginning January 26, 2010, enforcement will be mandatory.

Importer Security Filing

Under the new rule, the "Importer Security Filing (ISF) Importer," or their agent (e.g., licensed customs broker),

must electronically submit certain advance cargo information to CBP in the form of an Importer Security Filing, before merchandise arriving by vessel can be imported into the United States. Significantly, certain information must be provided not later than one day (i.e., 24 hours) before the cargo is laden aboard a vessel destined to the United States. In other words, information must be provided to the U.S. CBP while the merchandise is still at the foreign port of lading.

The information required at that time includes¹:

- Seller;
- Buyer;
- Importer of record number;
- Consignee number(s);
- Manufacturer (or supplier);
- Ship-to party;
- Country of origin; and
- Commodity Harmonized Tariff Schedule of the United States (HTSUS) number.

¹ While not specifically indicated, the bill of lading number is also necessary, to properly link the Importer Security Filing to the Customs manifest data.

Two additional data elements must be submitted as early as possible but no later than 24 hours prior to the ship's arrival at a U.S. port. These data elements are:

- Container stuffing location; and
- Consolidator.

As noted above, all filings must be done electronically, via vessel Automated Manifest System (AMS) or the Automated Broker Interface (ABI). There will be no paper forms.

Exemptions

There are several exemptions from the new requirements, including the following:

- Cargo arriving by other modes of transportation (e.g., truck) is not subject to these new requirements;

- Bulk cargo (i.e., cargo that is loaded into a ship's hold without being boxed, bagged or hand stowed) is exempt from all Importer Security Filing requirements;
- Department of Defense shipments that are exempt from manifest requirements are also exempt from Importer Security Filing requirements;
- Breakbulk cargo that has already received a temporary exemption from CBP for the purposes of the 24-hour manifest rule requirements is not subject to the Importer Security Filing requirements (breakbulk cargo is packaged but non-containerized cargo, such as bags, bales, barrels, boxes, cartons, drums, pallets, sacks, vehicles, etc.).

To summarize, this new rule, in general, only applies to imported cargo arriving in the United States by ocean vessel in containers. Flexible enforcement will end in January 2010 when CBP will begin to impose penalties for non-compliance.

For Additional Information

If your client has further questions regarding these new requirements, the International Trade Practice Group at Hunton & Williams stands ready to assist.

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