



Importer Security Filing – What's It All About?

As we all know, a heightened interest in national security over the past several years has elevated the focus being placed on supply chains. Governments want to know more about goods being moved at an earlier point in time, and also want to know more about the parties involved in moving them. From the perspective of goods shipped to the US as an interim or final destination, US Customs and Border Protection (CBP) began to require that carriers provide their manifest information far earlier in the voyage – in most cases prior to lading. This gives some insight, but not the level of detail that is necessary for CBP to target and identify high-risk shipments. Without better information and a better approach, many lawmakers began to talk about dramatically increasing the physical inspection of goods.

To avoid choking the flow of cargo through ports, CBP developed the concept of the Importer Security Filing (ISF), which is also known in the trade as 10+2. The ISF is required for most goods transported by vessel, and it must include detailed information that is transmitted to a CBP data warehouse. With few exceptions, this information is required to be sent at least 24 hours prior to lading. When the goods are not intended to be entered into the US but still arrive at a US port, CBP requires five pieces of information.

The requirement to provide this information has been on the books for just over a year, but CBP recently concluded a one-year delayed enforcement period. The first year gave parties time to understand their obligations and implement new procedures without fear of facing repercussions.

What Goods Require an Importer Security Filing?

The ISF applies to both containerized and breakbulk goods arriving by vessel in a US port from a non-US port. This means any goods arriving by rail, truck, or air, and bulk cargo arriving by any mode, are exempt from ISF requirements.

Bulk cargo, as specifically defined by CBP, is exempt. CBP considers bulk cargo to be homogenous cargo that is stowed loose in the hold and is not enclosed in any container, such as free-flowing articles pumped through a chute or handled by dumping, or uniform cargo that stows as solidly as bulk cargo and requires mechanical handling for lading and discharging. Some types of bulk cargo can be bundled, if it is only for the purpose of securing the cargo during transit.

Who Must Provide the Information? How is it Sent to CBP?

CBP requires five or ten elements in the ISF. The five elements are required for transit cargo, such as freight remaining on board the vessel or freight that is not imported into the US, but will pass through and be exported. The ten elements are required for goods that will be imported into the US. In the regulations, the party required to provide the information is called the ISF importer. This person is defined as the party causing the goods to arrive within the limits of a US port by vessel. Typically, this person is the goods' owner, purchaser, consignee or agent, such as a licensed customs broker. In limited situations, another party is required to provide the information. CBP's definitions may mean more than one party meets its definitions. It is very important that the parties involved establish who is responsible for making the filing. As discussed later, the consequences for late and inaccurate filings can be very costly.

CBP requires the ISF to be transmitted by an approved data interchange. Many transportation intermediaries and customs brokers have this information as a part of their everyday business and provide the filing as part of the services available to customers.

What Information is Needed and When?

When only five elements are required, the following must be provided: (1) booking party name and address; (2) foreign port of unloading; (3) city code for the place of delivery; (4) name and address of the first deliver-to party scheduled to physically receive the goods; and (5) the six-digit harmonized tariff number describing the goods.

When the more detailed filing is necessary, CBP requires the following ten elements: the names and addresses of (1) seller; (2) buyer; (3) importer of record; (4) consignee; (5) manufacturer; (6) ship-to party; (7) container stuffing location; (8) consolidator; (9) the goods' country of origin; and (10) the six-digit tariff number must also be provided.

Generally, all information is required to be filed with CBP at least 24 hours prior to lading. In limited situations, the deadline is at a later time. CBP requires that the best information be provided at the time of the filing. If, at a later time, more accurate information becomes known, there may be an obligation to amend the filing and provide an update.

What are the Consequences of Not Following the Rules?

For most of 2010, CBP announced it will use the least amount of enforcement measures necessary to obtain compliance. As time progresses, enforcement will graduate to more costly measures. On the easy side of measures, CBP will issue warning letters. If compliance does not

improve, CBP will avail itself of other measures, such as delaying freight or the imposition of liquidated damages. CBP could delay freight in a number of ways, such as instructing the carrier not to load at the foreign port, not to unload at a US port, or it could deny the release of cargo that has been off loaded at a US port. Liquidated damages can be assessed by CBP. The regulations allow CBP to collect \$5,000 for each violation and each ISF can have up to three different violations.

What are the Violations?

CBP requires that every ISF be complete, accurate and filed in a timely manner. To ensure this, CBP requires that the importer post a bond enabling CBP to assess liquidated damages in the amount of \$5,000 for each violation of these requirements.

How Can I Mitigate My Risks With ISF?

It is more important than ever to know your supply chain partners and they must be able to provide the required ISF data elements in a timely manner. Your supply chain partners must be able to provide the required ISF data elements in a timely manner. Consider requiring such data elements be collected and provided earlier in your shipping process. Know what you are importing before you import it. CBP requires that the lowest Automated Manifest System (AMS) bill of lading number (i.e., house or regular bill) be provided as part of the original ISF transmission. Your supply chain partners must be able to provide this data or there is a guaranteed claim by CBP. Have a plan as to how you will compile and provide the information. Make the requirements part of your supplier agreements or purchase order agreements. Reference ISF obligations in all purchase orders and contracts to obtain recourse from the offending party.

What Are the Bonding Requirements?

Single Transaction ISF: For a single ISF transmission only. The bond amount is \$10,000.

Single Transaction CBP Form 301: For a unified filing, 'unified' means that the entry and ISF filing are being submitted at the same time. Only if the filings are unified, (occurring simultaneously) will this type of bond work without a separate ISF bond. Import bonds are generally calculated at value plus duties, taxes and fees, or 300 percent of the value, unless otherwise directed by CBP.

Continuous ISF: This bond covers ISF transmissions only, not entries. All bonds are set at a \$50,000 limit. (Note: CBP may require an increased bond, depending on the bond principal's violation history.)

Continuous CBP Form 301: Activity codes 1, 2, 3 or 4 may be used to cover ISF filings. The activity code 1 (import) bond may be used to cover both the ISF filings and entries, whether they occur at the same time (i.e., are unified) or not. The bond amount is generally calculated at ten percent of the total duties, taxes and fees paid to CBP for either the last 12 months or the next 12 months, whichever amount is greater, and is subject to rounding rules and an overall minimum of \$50,000.

Obtaining ISF Bonds: The liability placed on US customs sureties has nearly doubled in the last decade. Many sureties that might have begrudgingly provided import bonds as an accommodation to a client in the past may no longer be willing to take on the added complexity and exposure under ISF. Therefore, it is good risk management to find a capable surety and obtain the needed bond at least 30 days prior to any cargo being moved. Any licensed US customs broker can provide an ISF bond, but it is important to consider the financial rating of the surety, as often one must comply with insurance standards set by one or more parties in a transaction or project move. In addition, it is simply a good business practice for the surety you use to hold an A.M. Best financial rating of at least 'A-' or better, and to demonstrate intimate knowledge of ISF and US customs bonds.

The Result

There is no argument that ISF adds complexity and cost to US imports in the name of securing waterborne supply chains. However, the silver lining may be the fact that the alternative to ISF could be much worse – that is 100 percent physical screening of ocean cargo. Other countries are monitoring the progress of the ISF scheme closely and some have already launched pilot programs identical to ISF.

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