



Reality of the New Import Ocean Supply Chain Import Security Filing

Albert Saphir, ABS Consulting

On January 26, 2010, the Importer Security Filing (ISF) Rule, commonly referred to as 10+2, will become effective. This will change to a mandatory rule with the Custom Border Protection (CBP) imposing fines.

A note from Mike Regan, CEO, Tranzact Technologies, Inc.

If you read any logistics or supply chain publications, then you are most likely aware of the Importers Security Filing (ISF) requirements commonly referred to as 10+2. This program was initiated on January 26, 2009; however the U.S. Customs and Border Protection (CBP) allowed a one-year grace period before instituting fines for noncompliance. (See the ISF FAQ for general information regarding the ISF Rule.)

Some companies have responded in a very aggressive and positive manner. Other companies have been more laissez - faire, or are relying upon their importers to address this issue. Given the importance of this program, I thought it appropriate to ask a friend of TranzAct and an expert on this topic, Albert Saphir, Principal of ABS Consulting, to author this White Paper on the ISF program.

On January 26, 2010 the CBP will commence the enforcement of this requirement. While everyone's attention has been focused on the potential fines for noncompliance, I was unaware of two very significant points that Albert addresses in this White Paper. First, ISF's do not liquidate, and can in fact remain open for up to six years. And second, companies may not find out for several months, and even up to a year, that penalties have been assessed. The potential for contingent liabilities or disruptions in the flow of imported inventory is significant.

Let me cut right to the chase and sound an alarm for companies who have not seriously addressed this ISF issue: **You could be in for some very unpleasant surprises.** And that is why I hope you will spend a couple of minutes and get a very rudimentary understanding of this program. If you are looking for some assistance, or have questions, Albert's contact information can be found at the end of this paper, or you may contact me at solutions@tranzact.com.

The ISF - 10+2 Rule

On January 26, 2010 the Importer Security Filing (10+2) rule will be mandatory for all imported shipments into the United States. Given the magnitude of fines, potential liabilities and issues associated with imported inventory, it is important to understand the impact that this program can have on your company. **We strongly recommend that your company invest in and prepare for this initiative.**

Let's take a look at what you can expect. The CBP (U.S. Customs and Border Protection) will commence enforcing this new advanced electronic data requirement as of January 26, 2010 with severe penalties of \$5,000 (up to \$10,000 per ISF) for each for late filing, missing filing, or inaccurate filing. (Keep in mind that you are talking potentially about a filing for each container that you ship.) These penalties will be levied directly on the importer of record and mitigation, reduction of penalty amount is going to be very

limited compared to traditional mitigation guidelines and practices of the past when dealing with CBP penalties.

While many shippers are focused on the findings, they are overlooking what may very well be the most punitive part of this program. **It may take several months and possibly even a year or more for the CBP to levy their penalties.** So if there is a mistake, or inaccurate filing, that could be easily corrected, this error could result in penalties for a tremendous number of containers.

Aside from the huge potential liability and its impact on your financial statements, here is something else that should really grab your attention: The ISF's do not liquidate, so their risk remains "open" for up to six years as each ISF is secured with a bond which is considered a contract and thus contract law applies. In other words, future ISF penalties could be issued against an importer for ocean imports that happened six years ago (after 1/26/2010 of course), a huge record keeping dilemma! So just imagine a scenario under which CBP finds errors or consistent late filings for recent ISF's. They could now go back six years and for sure find lots more. And you guessed right: Many more penalties will come your way. It may actually make an IRS audit look like a benevolent experience.



So what are your ISF financial exposures?

Some of you may now be asking just how significant the penalties and fines could be. Let's assume that your company has 1000 ocean shipments on an annual basis.

- **Penalties**

If only 5% of them will have a single ISF exception, your annual penalty exposure could be as high as \$500,000! And if this happens in later years and CBP deems that you have a material deficiency and elects to go back, the penalties become greater. And this ignores the amount of time your company is going to have to spend pulling down documentation to contest the CBP proceedings.

- **Bond amounts and bond fees**

This is a wild card for now, but we are recommending that our customers evaluate their bond coverage. Do you believe your regular continuous bond of \$50,000 or \$100,000 (basically calculated to cover your estimated annual duty liability toward CBP) will suffice in the long run?

Let's go back and look at the import example. Hypothetically, your six-year ISF liability "on paper" is going to be at minimum, many millions of dollars! Do you think your \$100,000 will be sufficient for long? And if we take it one step further, we think many shippers have been lulled into a false sense of complacency. After all, how many penalties have you received for your 1,000 import shipments over the past year? Probably none or very few. What is particularly vexing now is the fact that your specific risk factor for ISF penalties is of course unknown. If we assume the low 5% from above, you are now going to have 50 penalties a year to sort out. Thus the sureties will most likely increase the continuous bond fee/rate on top of potential higher bond amounts!

- **External ISF filing fees**

For better or worse, a lot of companies have outsourced the ISF filing to their customs broker thus resulting in additional fees. The truth is that while these companies could be an ISF self-filer - and would in fact be better off being a self filer, they choose to incur the additional \$25,000 to \$50,000 expense in their annual expense budget.

- **Internal ISF data management cost**

If you are a bit intimidated by the rules associated with importing containers, you may be interested to know that many companies do 99% of the work themselves to collect, assemble and validate the data required by their external filer. With the use of a global trade management tool (which accommodates ISF filings almost automatically), they could become self filer's. But we have seen several companies try to do it on their own with a homegrown system that can easily double, triple or even quadruple the above external ISF filing fee estimate and add a substantial burden to the additional internal cost to comply with ISF.

- **Other external ISF cost factors**

As previously noted, companies tend to focus on the penalties. What they also need to consider are transit time delays that could disrupt their supply chains and result in additional inventory cost. These delays could be caused by issues such as both onshore and in-transit to absorb issues with delays, demurrage at foreign ports (if you detect an error and do not want to face an ISF penalty), or demurrage and CBP intensive examination costs for those shipments arriving without an ISF on record.

What can you do?

If you've read this far then you know that 2010 will be a year full of new challenges in managing the global supply chain. The good news is that 2010 will also provide unique opportunities for those bold enough to embrace change and think outside the traditional box. And for some companies the ISF issue is a way to implement new ideas, achieve better automation, and actually improve service quality while creating real value for their customers and employees alike.

There are many advantageous ways to reduce:

- Your potential financial exposure
- Your ISF expenses (an 80% reduction of the aforementioned cost is not impossible)
- Risk of disruptions in the supply chain

Overall your company can create a better import process and actually turn the ISF challenge into a competitive advantage.

If you're looking for some inspiration, consider what Crate & Barrel has achieved with their ISF initiative. Crate & Barrel completely redesigned their import ocean supply chain during 2009 due to the new ISF requirement which went into effect on 1/26/2009. While many importers just sat on the sidelines and chose to take a risk by relying on a "Band-Aid" for a quick fix solution, Crate&Barrel took a very different approach to the challenge presented.

They commenced on their visionary and strategic ISF compliance program in late 2008 and achieved great results - considerable cost increase avoidance plus much improved supply chain visibility during 2009 and going forward into 2010. As you look at the data you can understand, this was a challenging assignment: 7,500 annual FEUs (forty foot equivalent containers), over 30 countries of origin, over 600 active import vendors, 3 steamship lines and 12 forwarders/NVOs. But their willingness to invest in order to improve their import supply chain process *and* achieve complete compliance with this new CBP mandate has put them far ahead of most other U.S. importers. They are ready for a successful 2010 and beyond.

Experience has proven that if you understand the issues and invest in people, technology and continued process improvement you can be successful. And this is true with the ISF requirement.

Conclusion

ISF self-filing is only best practice out there and must begin with the importer completely analyzing and re-designing their import supply chain around this new requirement to determine what the best choices are. This can include “unified entry filing” (combined ISF and customs entry in one shot) through your customs broker, ISF filing by your foreign freight forwarder/NVOCC, or even ISF filing by your foreign supplier.

Need one more reason why you should be proactive in addressing the whole area of shipment security? There is another initiative / challenging regulatory item that shippers will have to plan for in 2010: The TSA “Certified Cargo Screening” (CCSP) program. It requires that as of August 1, 2010, 100% of all air cargo going onto a passenger aircraft needs to be screened at a piece level. This will require major changes for everyone in the air freight supply chain, and it is a big jump from the current 50% screening level. Expect potential lengthy delays as airfreight is queuing for screening and additional cost as this is an unfunded mandate from Congress, and thus all cost must be borne by the user of air freight services.

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If you import goods into the U.S., you should be well aware of the U.S. Customs and Border Protection's (CBP) new Importer Security Filing (ISF) rule (commonly known as "10+2"), which will be enforced beginning on January 26, 2010.

The new ISF rule requires importers to electronically submit cargo information in advance to CBP for any shipments arriving by ocean vessel to be imported into the U.S. or shipments in transit via the U.S. The rule initially went into effect on January 26, 2009, for an interim period, during which CBP has been flexible and worked with importers to help them adhere to the new compliance regulations.

When this year-long provisional period ends on January 26, CBP will be enforcing the new rule with little to no flexibility. On average, it will take importers 30-60 days to fully implement the required changes and ensure that all of the required data elements are received timely and accurately. If you are hearing about the ISF rule for the first time or feeling unprepared for the transition, it is imperative that you get informed and take action quickly, as noncompliant importers could be subject to steep monetary penalties, increased inspections, and cargo delays.

ISF FAQ

What information do importers need to file?

Importers must submit eight pieces of data no later than 24 hours before lading:

1. Seller (name/address)
2. Buyer (name/address)
3. Importer of Record Number/FTZ Applicant ID Number (IRS, EIN, SSN, or CBP assigned number)
4. Consignee Number(s) (same as above, plus name/address unless the consignee is also the Importer of Record)
5. Manufacturer (or supplier)
6. Ship to party (name/address)
7. Country of origin
8. Commodity HTSUS number (to the 6-digit level)

Two additional pieces of data must be submitted no later than 24 hours prior to arrival:

9. Container stuffing location
10. Consolidator (name/address)

What information do carriers need to file?

Carriers are responsible for providing two final elements:

1. Vessel stow plan (must be submitted no later than 48 hours after the ship's departure)
2. Container Status Message (CSM) Data (must be submitted within 24 hours of creation or receipt)

What if I don't have this information or I choose not to file?

If an importer doesn't file or submits information that is inaccurate, incomplete, or late, CBP may charge \$5,000 per violation. CBP may also withhold the release or transfer of cargo, refuse to grant permits, mark orders as "Do Not Load," conduct additional cargo inspections, and, in some cases, seize cargo.