



CARGO SECURITY

INTERNATIONAL

www.cargosecurityinternational.com

Volume 7 Number 2

April / May 2009

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**SUPPLY CHAIN SECURITY:
Will 10+2 add up?**

Safety in numbers?

Lesley Bankes-Hughes looks at the fine print of the 10+2 interim ruling and canvasses opinion on its pros and cons

While the febrile issue of 100% scanning continues to occupy the thoughts of political and trade pundits and, it goes without saying, headline writers, another instrument of legislation designed to bolster supply chain security, the 10+2 ruling on cargo shipments to the United States, made its entrance at the end of January in a much more measured and subdued way. However, this interim regulation, which will become a final ruling at the beginning of 2010, has the potential to become an equally contentious issue for debate, and some industry observers are even speculating that the US Administration could use 10+2 as the next best option should 100% scanning eventually prove to be an unworkable ambition.

The ruling has been devised by **Customs and Border Protection (CBP)** to operate as another line of defence in its ongoing operations to target potential high risk in-bound shipments. In essence, importers of goods coming into the United States by sea now have to submit an Importer Security Filing (ISF) on each and every item. This will include 10 additional data elements which cover information garnered from each stage of the supply chain. For example, the importer will have to provide details about the product's manufacturer, seller, buyer, country of origin, container stuffing location and Harmonised Tariff Schedule (HTS) number.

So far so good. The requirements of the ruling now require the importer to have a more in-depth knowledge of his supply chain which, say those who support the legislation, can only be beneficial and a welcome move forwards towards achieving best practice in logistics as well as transparency and control over trade flows. However, the problem of collating all this information is further compounded by another requirement of the ruling; the imperative that a complete and accurate filing must be submitted no later than 24 hours before the cargo is loaded onto a US-bound vessel. Time pressures aside, the 24-hour requirement is, say some

sceptics, more open to interpretation than had been initially been envisaged.

For shipments coming into the United States which are comprised entirely of foreign cargo remaining onboard, the requirements for the importer are a little less onerous. Only five data elements are required here, including the foreign port of unloading and place of delivery, and the ISF for these shipments can be submitted at any time prior to lading. Similarly, only five data elements are required for those goods which are intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E). However, the 24-hour notification requirement does apply to these types of shipments.

While the importer now has additional responsibilities, the carrier/vessel operator is also now required to submit two additional items of information in the filing to the CBP. These data elements are the vessel stow plan and container status messages.

The ISF itself can be self-filed by the importer or via a Customs broker or other appointed agent, and the information should be submitted to CBP using a Customs-approved electronic data interchange (EDI). The systems currently available are the Automated Manifest System (AMS) or via the Automated Broker Interface (ABI). On receipt, CBP's system will automatically accept or reject a filing.

As with most items of homeland security legislation in the United States, the genesis of the 10+2 ruling lies in the 2006 SAFE Port Act. In 2002, CBP introduced the '24 Hour Rule', which is now accepted as a fact of life but at the time engendered a good degree of hostility from some of those involved in supply chain logistics. This rule, which applied only to carriers, calls for the submission of information on containerised and non-exempt break bulk cargos at least 24 hours before the goods are loaded at the foreign port. This expedited transfer of information, it is argued, enables CBP to undertake its risk assessments on potential threats much more quickly.

Prior to the introduction of the 10+2 ruling, importers were not required to pass on advance cargo information to the CBP and the submission of entry information operated within the much more elastic timeframe of 15 days of the date of arrival of cargo at a US port of entry.

For the supply chain sector, the 10+2 ruling has been looming on the horizon for quite some time: throughout 2007, CBP discussed the proposed regulation and its possible ramifications with interested parties in the trade sector and this culminated in the formal presentation of the 10+2 ruling in the Federal Register at the beginning of 2008. Over the past year, CBP has invited feedback on the rules, and the introduction of the interim ruling at the end of January does allow for a degree of flexibility and tolerance in the enforcement of the regulations. Complete and binding compliance with the ruling, including the imposition of penalties for failure to submit accurate and timely ISFs, will not come into effect until January 2010, and CBP has announced a period for submission of feedback on problems encountered with the ruling which will run until the end of May this year.

However, to slightly extend the well-used maxim, the proof of the pudding is in the eating rather than in the recipe. In attempt to discover how the 10+2 ruling is working some two months after its introduction, *Cargo Security International* talked to the Director of the 10+2 rule programme at CBP, Rich diNucci, as well as representatives of US Customs broking and manufacturing associations.

By 2 March, some 160,000 ISFs had been filed, but only 30% of that number had achieved the 24-hour deadline. Rich diNucci is, however, quite happy with initial user take-up of the filing requirement. 'It's going quite well in terms of filings,' he says. 'We began with 1,200 filings per day and we are now seeing about 8,000 per day.' An initial error rate of some 25-30% soon dropped to 15-20%, and when *Cargo Security International* talked to diNucci in mid-

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March, it was operating around the 7% level. The most common problem is, not surprisingly, data input error, and diNucci also flagged up some problems with duplicated filings where importers or their agents are submitting an ISF and not waiting long enough for a response from CBP before resending it.

DiNucci is anxious to point out that CBP is taking a softly, softly approach on 10+2. 'We will issue a progress report in the next couple of months,' he said, 'and at the moment there are no penalties and no holds on shipments.' During the consultative phase prior to the programme roll-out, many importers had queried the amount of supply chain information required to make a complete filing, but DiNucci says that 'many of those who voiced concern about identifying the data have found that they already had it within their information systems'. This is, he says, also true about the country of origin data element, which many importers had thought would be a sticking point. Many of these companies, says DiNucci, had probably actually resolved this issue before ISF went 'live' in January.

For importers, says DiNucci, the clear upside of more detailed filing on cargo is a tighter control of the supply chain. 'You have got to know your partners are solvent, that they can make your product,

and this is even more critical in difficult economic times.'

The programme chief does not envisage any difficulties with the filing of information by carriers as the necessary details are usually available from the terminal operators, and CBP's system for processing the ISFs also seems to be operating without any glitches. He also is satisfied with the performance of the two EDI systems; some commentators have suggested that the ACE system developed by US Customs might be offered as another alternative platform, but DiNucci ruled this out for the foreseeable future.

One by-product of the introduction of the 10+2 ruling is the creation of a huge information pool within CBP, and DiNucci acknowledges that this could be a resource with a very useful inherent value. He didn't reveal exactly how long CBP plans to hold on to these details: 'The combination of entry data and manifest data means we can see a lot better what is going on in the supply chain and any weak links; we will hold onto (the information) for a bit.'

When asked whether the implementation of the final ruling next January was set in stone, DiNucci was again keen to stress CBP's non-aggressive approach towards compliance and did not definitively rule out a phased introduction if needed.

It would seem that the bulk of filings will be submitted by Customs brokers appointed by importers, although it should be remembered that it will always be the importer who takes the responsibility for the veracity of the information provided. Amy Magnus, a Customs broker with **A.N Deringer Inc**, remains to be convinced about the scope of the ruling and its practical implementation.

In terms of inputting the information, she says that the reality of data entry is very different to the experience of the period of consultation: 'Before this people could do a test, but it was not really what we are doing now; it was really just a spreadsheet and a couple of data files.' She says that the ruling has created a 'difficult and costly' IT

challenge, and she says her clients are having 'all kinds of hiccoughs'. 'We are having some successful transmissions, but some transmissions are being rejected and we don't know whether the client's system is wrong or it is something at CBP's end – it needs a lot of troubleshooting.'

One of Magnus's major complaints centres on the issue of the establishment of a bond for the security filings. CBP has expressed its intention to use a single transmission bond, but 'Customs has not thought it through,' she says. 'We don't know how the bond is going to work, and it will only be used when (10+2) becomes a final rule so we won't have time to test it.' CBP has been 'totally unprepared to discuss the issue,' she says, and points to the fact that even surety companies, who will act as the underwriters of the bonds, have not as yet been consulted about the matter.

Magnus feels there are 'too many unknowns' about the reasoning behind the introduction of the programme. The information it obtains is 'extremely powerful,' and she suggests that it could have the potential to be used in place of the 100% scanning requirement should that eventually prove to be unworkable. 'If it is used to ameliorate the 100% scanning requirement (which will choke off trade) then this would be a positive outcome and it might be all worth it.'

The inclusion of the 'country of origin' data element 'was always going to be a problem,' she says, and she flags up ongoing discussions within the United States about possible changes in the way 'country of origin' is defined to bring things into line with North American Free Trade Agreement (NAFTA) classification of goods. This would create a much more technical definition of 'origin,' she says, which would make life more difficult for the importer.

Overall, Magnus is fairly pragmatic about the ruling: 'All hurdles can be overcome.' However, she points to what she sees as a glaring loophole in the 10+2 framework. 'The issue is that any party can file the information as long as they have a bond – is this making

'Whatever issues are brought to the fore during the current review period, it seems unlikely that the CBP will substantially change the content of the ruling'

things more secure?' She believes that the filers should be vetted by another party and then receive some form of ISF accreditation. She acknowledges that this viewpoint from a Customs broker could be seen as self-serving, but she notes that brokers are controlled and regulated by US Customs which does imply a degree of secure vetting. As things are under the new ruling, there is no means of checking the actual identity of the filer. To suggest that filing via the ABI or AMS is secure is not correct, she says, pointing to the fact that it is easy for anyone to purchase a product via the internet which can be used to link into the EDIs, and by implication into the heart of CBP's data acquisition system. 'If this mission is about security, then it is a farce – this is the elephant in the room.'

Cindy Allen, Chairman of the Task Force on Security, **National Customs Brokers and Forwarders Association of America**, also highlights some of the challenges encountered in the first months of 10+2 implementation. 'It is quite a costly process,' she says, and points to a particular problem with obtaining the correct data tracking number. In certain circumstances, this number can differ on a forwarders bill of lading and a master bill of lading, and in some cases customs brokers who are handling the ISF are finding that the tracking numbers don't add up.

She is hoping that the CBP will exercise a degree of tolerance over the coming year as importers and customs brokers gain familiarity with the filing

process, but she warns that importers must hook up to the system sooner rather than later. 'One year is a challenging time span and we are hoping that CBP might show a bit of flexibility,' she says. 'If a major importer can show that it has been filing from day one, but at the end of the year still has some issues to resolve with a particular small business segment than we would hope that Customs might be a little tolerant.'

Catherine Robinson, Director of the **National Association of Manufacturers**, also observes that there have been some initial problems with some of the data elements, such as the HTS number, country of origin and manufacturer's name. She also notes that the definition of the 24-hour rule is proving to be something of a grey area, and that even the CBP is giving mixed messages on this. The 24-hours prior to loading requirement could be applied from when the carrier ship arrives in port, but she points out that it could be some 1-4 days before the vessel is actually loaded, and in the current depressed economic climate the vessel could be waiting in port even longer than this.

During the consultative period in 2008, the association also lobbied the CBP for a differentiation between high risk and low risk shipments, as it believes that low risk importers are being unfairly penalised. For this category of shipment, the Association suggests that importers could perhaps be required to complete fewer data elements or be given more flexibility on the timing of their filings.

Whatever issues are brought to the fore during the current review period, it seems unlikely that the CBP will substantially change the content of the ruling. There will inevitably be some resistance from some industry players, but, as Cindy Allen points out: 'People didn't think the 24 Hour Rule would be achievable but it was, and the same will apply for this ruling.' What is interesting to contemplate, however, is the speculative link Amy Magnus makes between 100% scanning and the 10+2 rule. For future developments, watch this space.