

Offshore Purchasing: Can You Afford Import Non-Compliance?

The US Customs and Border Protection Agency (CBP) have officially begun full enforcement of the new Importer Security Filing regulation on January 26, 2010, and non-compliance could cost you quite a bit in fines. The new customs regulation, commonly known as the “10+2” initiative, requires importers and carriers to provide additional advance trade data to CBP as part of the Security and Accountability For Every Port (SAFE Port) Act of 2006, for non-bulk cargo shipments arriving into the United States by vessel. It is important to know that the purchaser could be held ultimately responsible for timely filing of the ISF and not even know it.

The CBP, for the purposes of ISF filing, defines an importer of record as the party causing the goods to enter the limits of a port in the United States. In other words, when you issue a Purchase Order to a foreign entity you are in fact causing the goods to enter the US. Regardless if you are acting on behalf of a client, you are the importer of record responsible for filing the ISF and any fines due for late filing or incorrect data. The penalty imposed by the CBP is \$5,000.00 in liquidated damages for a late filing, or \$5,000.00 per error on an improperly filed ISF. There is no statute of limitation on these penalties and you could potentially be held liable for fines years after the fact.

So what is the Importer Security Filing?

The reason the ISF is known as the “10+2” initiative is because it consists of 12 data elements; 10 from the importer + 2 from the carrier. The data elements the importer is responsible for are as follows:

1. Importer of Record Tax ID Number
2. Consignee Tax ID Number
3. Seller Name and Address
4. Buyer Name and Address
5. Ship to Party
6. Manufacturer Name and Address (per line item)
7. Country of Origin (per line item)
8. Commodity HTS-6 Code (per line item)
9. Container Stuffing Location
10. Consolidator Name and Address

The ISF must be filed electronically at least 24 hours prior to vessel loading. It must be filed via the Automated Broker Interface (ABI) and therefore the actual filing task is typically assigned to a representative of the importer who is in the ABI system, such as a customs broker.

Navigating Around the ISF

The ISF regulation is not as scary as it may seem and can be easily managed by working with a good US customs broker and cooperative vendors. However, some purchasing firms do not want the added responsibility and risk. Thankfully there are options, albeit limited and perhaps not very cost effective.

According to the ISF regulation, the PO issuer is the ultimate responsible party and importer of record. One way to effectively transfer the importer responsibility of the ISF regulation is to issue PO's to domestic entities and use domestic terms of sale. If that entity brings the merchandise into the United States from their offshore plant then they are considered the importer of record and will be responsible for customs compliance.

Another option would be to bring in goods to the United States via air or ground freight since the ISF only applies to Ocean cargo. These are viable options for product imported from Canada or Mexico for ground freight and smaller purchase orders for air freight. In any event, these options will drive up costs while reducing risk and now more than ever purchasing firms should carefully consider their options and plan ahead to avoid unexpected cost exposure for years to come.

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