

March 18, 2008

Border Security Regulations Branch  
Office of Trade  
U.S. Customs and Border Protection  
1300 Pennsylvania Ave., NW (Mint Annex)  
Washington, D.C. 20229

**Re: Notice of Proposed Rulemaking FR Doc E7-25306,  
Importer Security Filing and Additional Carrier Requirements**

Dear Sirs:

I am writing on behalf of I.E.Canada, Canadian Association of Importers and Exporters regarding the Notice of Proposed Rule Making (NPRM) published in the Federal Register on January 2, 2008 relating to the proposed Importer Security Filing (ISF) and Additional Carrier requirements, referred to as “10 + 2”.

### **Introduction**

I.E.Canada has been a leading voice for the Canadian trade community since 1932, and serves small, medium, and large enterprises across Canada. Our membership comprises manufacturers, importers and exporters from diverse industries, as well as a range of service providers to Canada’s trade community. We have a growing membership that today exceeds 850. The vast majority of our importer and exporter members trade with the United States reflective of the fact that nearly 70 percent of Canada’s trade is with the U.S.

The NPRM is of concern to our members as many of them import goods from overseas into Canada through the United States. Some make consumption entries into the United States and then re-export the goods to Canada. More commonly Canadian companies import merchandise in bond into the United States for transport to Canada either as immediate exportation (IE) or transportation and exportation (T & E) shipments. Canadian importers will also be impacted by the rules relating to Foreign Cargo Remaining on Board (FROB). They, like their US counterparts, are concerned that the proposed ISF will result in significant delays and higher costs without achieving a meaningful improvement in security.

We recognize that the protection of citizens must be of paramount concern and that the members of the trade community must work together with government to ensure the security of the supply chain. I.E.Canada and its members support and are actively engaged in consultations with the Canada Border Services Agency with respect to various initiatives to improve the security of the supply chain, including the Advance Commercial Information (ACI)/eManifest initiative and modernization of the Partners in Protection (PIP) program to make it compatible with the Customs-Trade Partnership Against Terrorism (C-TPAT). However, for the economic well-being and competitiveness of both our countries, it is important in implementing such programs to strike a balance between physical and economic security.

We share the concerns that have been articulated in submissions by the Secretary General of the World Customs Organization (WCO), the American Association of Exporters and Importers (AAEI) and others that the United States is acting unilaterally in requiring additional data elements that have not been agreed to under the WCO SAFE Framework of Standards. This unilateral approach threatens to undermine the work that has been done internationally to achieve harmonization in order to facilitate global trade and contain costs to business while securing the supply chain.

The proposed new security filings will require significant and costly changes to the business processes of importers and others throughout the supply chain. The failure to take a risk-based approach to the collection of this new data (for example, by exempting participants in supply chain security programs such as C-TPAT and PIP) raises the concern that not only will additional costs and delays be imposed on business, but U.S. Customs and Border Protection (CBP) will not be making the most effective use of its own limited resources. At a minimum, it should be possible for data for repetitive shipments from low risk importers to be filed on an account basis.

Without the technical specifications for the data elements, it is also not possible for the trade community to fully understand and appreciate the implications of meeting the requirements of the new security filings and certainly not to prepare for their implementation. We urge you to work with the trade community to fully test the new security filings and to develop a phased approach to implementation to avoid serious disruption to trade not just in the United States but for your closest trading partners as well.

As AAEI has so well-represented the interests and concerns of importers into the United States, this submission will focus on shipments moving in bond through the United States and FROB.

### **FROB and I.E. and T & E Cargo**

Under the proposed regulations five data elements are required for shipments consisting entirely of FROB or of goods intended to be transported in-bond as IE and T & E shipments. The five required data elements are (1) booking party name and address; (2) foreign port of unloading; (3) place of delivery; (4) ship to name and address; and (5) commodity HTSUS number.

While the carrier will have the legal responsibility for submitting the data elements in the case of FROB, as is evident from the submission by the World Shipping Council (WSC) and other carrier representatives, carriers are reluctant to take on this obligation particularly given the onerous penalties involved. Ultimately the carrier will look to the Canadian importer to ensure that it has the required data and until this data is received cargo will not be loaded onto the vessel creating the potential for significant delays in foreign ports.

We share the concerns raised in submissions by AAEI and others with respect to these five data elements:

- *Booking party name and address:* The definition for this data element should be consistent with commercial practice and should be “the party who initiates the reservation of the cargo space for the shipment.”
- *Foreign port of unloading:* Where will this port code be found?

- *Place of delivery*: Clarification is required with respect to the meaning of this data element. Does it mean the place of delivery under the terms of the carrier’s contract? Where will this city code be found and what format will be used?
- *Ship to name and address*: We agree as recommended in other submissions that the definition of this data element needs to be clarified and that the “ship to” party should be “the party to whom the carrier is to deliver the goods under the carrier’s contract of carriage” rather than the “first deliver-to party scheduled to receive the goods have been released from customs custody.” This data element is also not always known prior to departure from the overseas port and may change en route. This field should therefore be optional when not available 24 hours prior to lading.
- *Commodity HTSUS number*: In addition to the concerns raised by AA EI and others with respect to the challenges associated with providing the six-digit HTSUS number for purposes of the ISF, we wish to point out that while the Tariffs in the United States and Canada are both based on the Harmonized Commodity Description and Coding Systems, the customs authorities in the U.S. and Canada do not always agree on the classification of goods to the six-digit level (the different approach to the classification of “kits” being just one example). There will be an added level of complexity for Canadian importers if they must instruct their overseas suppliers or service providers to provide one tariff classification for purposes of US security requirements and another for Canadian customs purposes. The six-digit harmonized code should not be mandatory. Whether optional or mandatory, it should not be necessary to provide the six-digit classification under the HTSUS; it should be acceptable to provide the six-digit harmonized code for the goods in the country to which they are ultimately destined.

We also support the alternative recommended approach for FROB and in-bond shipments that have been made in other submissions: either eliminating the ISF filing entirely for these shipments or expanding the vessel cargo manifest filing in the Automated Manifest System (AMS) to include additional data elements, namely the booking party, the place of delivery and the ship to party.

Clarification is also required with respect to how cargo diversions of I.E. and T & E shipments from one US port to another will be handled and specifically whether such diversions will require permission from Customs & Border Protection and what process will be followed. In addition, ships or cargo originally destined to a Canadian port, such as Vancouver, are sometimes diverted to a US port such as Tacoma or Long Beach due to weather, labor disruptions or other reasons. In such cases, no ISF will have been filed prior to departure from the foreign port. How will these types of diversions be handled?

### **Other Considerations**

Finally we urge CBP to carefully consider the submissions that have been made with respect to:

- Delaying implementation of these new data requirements until the WCO Safe Framework of Standards has been amended;
- Conducting a new study into the costs and benefits of the proposed new security filing incorporating more realistic assumptions about the significant delays and increased costs that are likely to be experienced by importers;

- Reconsidering the liquidated damages penalty structure, which is excessive and unfair to importers who often do not have ready access or control over the required data. The approach to penalties is also inappropriate given that the data is not being provided for trade compliance/entry purposes and the nature and volume of data is such that it is inevitable that there will be clerical and other unintentional errors;
- Providing visibility to importers into ISF filings made by agents on their behalf by creating a unique reference number.
- Reconsidering the requirement to link data on a line by line basis. Linking data on a line by line basis is complex; shipments with hundreds of invoice lines will take hours to prepare in addition to the time required to prepare the entry.
- Working with the trade community to fully test the new security filing and to develop a phased approach to implementation of ISF, rather than simply adopting a phased compliance and enforcement strategy.

We appreciate this opportunity to provide comments on the NPRM and thank you for your consideration of the issues raised.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Mary Anderson", is written in black ink. To the right of the signature is a vertical red line.

Mary Anderson  
President