



March 14, 2008

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

Re: Comments in response to the Notice of Proposed Rulemaking
FR Doc E7-25306
RIN 1651-AA70
Importer Security Filing and Additional Carrier Requirements

Dear Sir or Madam:

AeA members recognize and support the requirement under the Safe Port Act (2006) for U.S. Customs Border & Protection to gather additional data elements to support the National Security of the United States of America. AeA members have identified the following areas of concern regarding the Notice of Proposed Rulemaking (NPRM) and request additional information on the questions raised herein.

1. Visibility - Transmission – Compliance

The NPRM needs to address the visibility of Importer Security Filing data elements submitted on behalf of the Importer of Record (IR) or by the registered filer through alternate methods than what is proposed. The trade community wants to assist with supporting national security and we recommend the best way is to provide accurate information to US Customs & Border Protection (US CBP) through the ACE portal.

By allowing the use of alternate technology systems, besides ABI, Importers will have more visibility and control of the data elements and will be able to make adjustments to the information elevating the accuracy of data. ABI would have to be updated to accommodate the additional 10 + 2 data. By using ABI importers are limited to visibility unless they pay the additional costs for ABI software, which will be higher due to the updates which will have to take place. By using authorized 3rd party Agents to file on behalf of the importer it gives the IR limited control, but all of the responsibility. By providing an alternative such as the ACE portal, Importers can provide a higher level of accuracy and more control to support the longevity of the proposed rule.

The NPRM does not allow Importers the ability to validate and monitor changes to the shipments made using the IR# with US CBP, in order to provide the most up to date and

accurate information available to US CBP for the import shipment. The Importer's ability to provide US CBP with accurate data elements to target risks to the United States national security will enhance the qualification of potential threats to the United States. The NPRM should reconsider the use of the ABI system to allow Importers to validate and edit based on the timelines provided for in the NPRM. If the ACE portal is utilized importers will be able to update and edit the data elements to provide US CBP the ability to qualify in-bound shipments to the US. The NPRM is only giving data elements for US CBP to review, but the data elements are not accessible to importers visibility without purchasing ABI software or relying on a 3rd party agent.

The impact of the NPRM covers a wide variety of companies and US CBP should not make broad based assumptions regarding the ability of Importers to provide accurate ISF data elements. The availability of information being requested is different based on company structure, technology resources, supply chain characteristics and industry. Not all companies know the HTS number prior to shipping. CBP makes the assumption in the Federal Register Doc E7-25306 IV that Importers have HTS information "*...known well before the placement of the order for their goods*" [with the foreign supplier]. There also may be a difference in HTS provided by the exporter based upon the exporting countries Customs ruling versus U.S. CBP HTS assignment under the importers due diligence. The assumption US CBP concludes should not be used when structuring the execution of this security proposed requirement because the NPRM covers a wide variety of companies with different supply chains and relationships with foreign suppliers. The assumption made in Federal Register Doc E7-25306 (F) should not be made the standard for all importers.

If the importer uses an agent to file the ISF data elements there may be a reluctance to edit the data elements to increase the accuracy due to the additional cost of an agent to edit the data elements. It is important for US CBP to recognize the relationship of a 3rd party agent and importer to provide visibility of ISF data elements. Importers want to follow the regulations and must be able to create a check and balance in order to validate and audit the data elements. As an option, ACE portal importers could edit typos and update the transmission data prior to arrival at the port limits.

By requiring all information to be communicated through ABI an Importer must rely on a separate 3rd party agent to receive reports or invest in ABI software to review the data elements filed. Customs Brokers will incur additional costs because they are loading data twice for the same entry and this cost will be passed on to the Importer. Requiring importers to obtain ABI software will add a financial burden on the company in addition to providing the data, and the Importer will also require IT resources for management and administration of the ABI software. These additional costs will impact small and medium sized companies significantly.

2. Changes to Entries and Changes to ISF

What are the proposed requirements for the 10+2 data elements in correlation with a consumption entry, post entry adjustment or a protest when filed with the entry and/or

entry summary documentation versus filed only as the ISF? Will a discrepancy between the data elements and entry adjustment be counted as a violation of the new regulations? We request US CBP to provide an FAQ sheet on what to expect and how to file changes to the ISF and correlated entries. If this correlation between a formal entry and additional data elements are linked for purposes of exam targeting, compliance scoring or result in liquidated damages it will lead to consequences on a company's ability to report post entry adjustments and file a protest.

3. Diversion of Cargo - Flexibility to the Supply Chain

Flexibility to the supply chain must be considered and be a large focus for the new proposed requirements. An Importer's supply chain continuously is developed to be flexible and the shipment's destination can change multiple times upon arrival to the US. Some shipments can be diverted to alternate warehouses, stores or be immediately re-exported. These decisions can change hour by hour depending on supply and demand for the in-bound shipment. The new proposed rule of defining the destination must take into consideration the ability to quickly change the destination of the shipment within the US. The freight forwarders at point of origin which will be required to communicate more frequently and also increase charges to the importer.

What are the consequences for changing the destination, delays at the port, Customs examination because of a change to the data elements, higher targeting scores for future shipments or re-delivery notice by US CBP? Importers and US CBP must strike a balance of flexibility to allow the Importer's supply chain the ability to change without having a negative impact on the company. The repercussions will affect an Importers supply chain and US CBP accuracy of data.

What happens when product is changed from a T&E or IE to a formal consumption entry? If an importer diverts a T&E or IE shipment to a final consumption entry and must comply with the NPRM, by updating the remaining data fields, how long will US CBP take to review the information before releasing the cargo? The change of a scheduled T&E or IE can happen for many reasons but mostly for expediting cargo or change in demand. If the process to submit the additional data elements in conjunction with US CBP reviewing the additional elements equates to additional time at the port of unloading, it will adversely affect the flexibility to expedite or divert the cargo. This will negatively impact the ability of an importer and add cost to the supply chain.

We request US CBP to draft the criteria of targeting shipments for exam carefully in order to not penalize importers for changes to the final destination of shipments. In addition, liquidated damages for these changes should not be applicable.

4. Availability of Required Data

The Inco-terms between Sellers and Importers vary by import shipments. The ability of the importer to rely on the Seller's information to transmit ISF can be limited or not provided by the Seller. Current contracts do not require knowledge of ISF data elements.

The negotiation between the Seller and Importer is based on a mutual acceptance of the transaction but information such as Manufacturer or stuffing location is not accessible on all shipments. This can purposely be structured by the Seller in order to keep the manufacturer and stuffing location confidential in order to secure future transactions. If the seller is authorized to choose the carrier, how can the importer be held accountable to provide data? These situations are common when there are Trading Companies, Export Companies or a Seller keeping its source confidential to discourage the importers from going direct to the manufacturer.

US CBP must expect these types of transactions and provide guidance inside the proposed regulation on alternatives or exemptions when the seller is unwilling to provide manufacturer and stuffing location to the importer. The Federal Register Section IV (H) states this will be handled by rulings made with US CBP. US CBP rulings will take time and could jeopardize timelines with the supply chain efficiency. Guidelines must be put in place prior to implementation of the proposed rule to provide importers with the knowledge on how to submit the required data elements.

5. WCO Safe Standards Definitions

We recommend US CBP establish distinct definitions that align with the SAFE Framework of Standards of the WCO. Initializing a global standard will provide further support by U.S. importers for the NPRM. If the NPRM becomes final before the SAFE Framework of Standards of the WCO is agreed upon, the Importer Security Filing and Additional Carrier Requirements will create a unilateral standard for the U.S importers only.

Global compliance of supply chain security will be more difficult and held as an exception to shipments only destined for the US, while future requirements are developed under the SAFE Framework of Standards which may be different for all other global shipments. The consequence to global companies is a two system approach to supply chain security.

6. Fines and Penalties

AeA members do not argue that there should be a fine/penalty for failing to comply with these security regulations. However, liquidated damages equal to the value of the merchandise is excessive. Especially considering that high technology manufacturers would have very high value items in the containers. A container of bulk wheat and a container of electronic devices or computers have an extremely different value. It is unfair to assess a penalty based off of value for this regulation. A flat penalty per container rate should be implemented.

7. Additional Comments

AeA members understand this policy is initially covering ocean vessel shipments; however there is a great deal of interest on the future implementation plans for air

shipments. Many of our members rely on air transportation for critical manufacturing requirements to avoid line shutdowns in global locations. Some of these air shipments include expedited counter to counter, next flight service, courier hand carry, and charter flights.

We expect the global leader in supply chain security, U.S. Customs and Border Protection to take strong consideration of the points listed above in order to enhance the United States national security without forcing unnecessary cost, penalties and compliance of U.S companies to comply with the NPRM.

In response to the NPRM, a member company of AeA organized an anonymous benchmarking survey opportunity for importers to help assess impact, brief management and otherwise prepare to analyze and discuss the NPRM. Forty-three importers across several industries including electronics and automotive participated in the anonymous web-based survey, the results of which are attached to this letter. This survey is being provided to CBP as part of the NPRM process because it illustrates the deviation between what CBP has calculated and published in the NPRM for time and costs versus what certain importers are calculating particularly when considering access to the data elements, cost to file an ISF, cost of on-going management and the time estimate to comply with the NPRM. It is the position of AeA's member companies that using ACE to manage the ISF, creating a pragmatic solution for amending filings without negative impact to selectivity processing and aligning security requirements to global requirements will contribute to reducing the time and cost impact otherwise determined by the NPRM in its current form.

AeA would like to thank U.S. Customs and Border Protection for the opportunity to provide our comments. Please contact me by phone at: (202) 682 – 4433 or via e-mail at: Ken_Montgomery@aeonet.org if we can be of further assistance.

Sincerely,



Ken Montgomery
Director, International Trade Regulation