

10+2=\$\$\$\$

Import industry deals with cost and confusion of proposed cargo security rule.

BY ERIC KULISCH



The U.S. government's "10+2" proposal to collect more detailed information about containerized imports has international shippers on edge because of deep concerns about the cost of compliance, the difficulty of overhauling business practices, information technology and whether all their efforts actually improve security.

Despite all the hand-wringing, software providers who will help a large segment of industry connect to systems at U.S.

Customs and Border Protection say the integration job is manageable and that the security filing requirement will ultimately prove to be a benefit for business. Several likened the effort to implementation of the 24-hour rule in 2003 when Customs required carriers and non-vessel-operating consolidators to electronically file manifest information in advance of container loading, and the industry adapted and flourished under the new system.

Congress required regulations for advance electronic data in the SAFE Port Act of 2006 to protect against terrorist smuggling of weapons or materiel. The security filing is designed to provide more accurate data for CBP's Automated Targeting System that determines which inbound containers should be inspected by automated means.

Importers, or their agents, will have to file 10 types of data identifying the manufacturer, consolidator, buyer and receiver of the goods, as well as a detailed product description 24 hours prior to vessel lading overseas. Under the proposed rule, vessel operators must submit their stowage plans identifying the onboard location of each container within 48 hours of vessel departure from the foreign port, and submit container status messages on an ongoing basis.

There are exceptions for freight remaining on board or shipped inland for exportation through another port, and ports of call within two days cruising time.

CBP is proposing that importers report their filings via the Automated Broker Interface (ABI), used by licensed customs brokers to file entries and conduct other customs business, and the Automated Manifest System (AMS), used by ocean carriers to file advance cargo declarations. The proposal would open access to ABI

for authorized agents handling the "10+2" data submission.

CBP, which worked for several years to develop the data collection capability, has said it will phase in enforcement of the rule over 12 months to help importers adjust to the new requirement once it is finalized. The agency recently extended the public comment period for the proposed rulemaking by 15 days until March 18.

Importers, logistics service providers, software vendors and trade compliance

"This is substantially larger than the 24-hour rule because it touches a much wider community than ... companies that transport goods. It covers hundreds of thousands of importers and all their agents. And it raises questions about the mechanics of how to do it, liabilities, powers of attorney, bonds — things that we didn't expect that showed up in this rule that we are still trying to digest."

Arthur Litman
former vice president
of regulatory affairs,
FedEx Trade Networks

consultants are scrambling to figure out how to implement the potential new requirements, and hope that the final rule will address many perceived pitfalls and areas of confusion.

Among the questions importers must resolve are:

- Where to find the data?
- Who will collect it?
- Who will consolidate it?
- Who will transmit the data to CBP?
- How will it be tied to the bill of lading and the two carrier reports?
- Who will notify the carrier that the file has been sent?
- How will it be transmitted in a timely fashion?
- Who will correct the data?
- Who will audit the filing?
- How is data confidentiality maintained?

"There's no doubt in my mind that this is substantially larger than the 24-hour rule because it touches a much wider community than those limited set of companies that transport goods. It covers hundreds of thousands of importers and all their agents. And it raises questions about the mechanics of how to do it, liabilities, powers of attorney, bonds — things that we didn't expect that showed up in this rule that we are still trying to digest," said Arthur Litman, vice president of regulatory affairs at FedEx Trade Networks, prior to his retirement in early February.

"It's as big a change as I've ever seen," said the usually understated Litman, who gave a presentation on the subject at the American Association of Exporters and Importers winter conference Jan. 21-22 in Newport Beach, Calif.

The timing is especially difficult because the trade community, faced with limited resources, also has to contend with the entire entry process moving out of the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE) in two years, a looming Census Bureau mandate to electronically file shippers export declarations and a recent CBP proposal to eliminate the favorable import valuation methodology available under the First Sale Rule, he pointed out. Each of those changes requires traders to make changes to their internal IT systems that communicate with CBP.

Companies like IES, Descartes, TradeTech, GT Nexus, Kewill Systems and Management Dynamics that provide freight transportation software to the customs

broker, forwarding and non-vessel-operating common carrier industries plan to have ready-for-use applications within their software programs by the time CBP implements its “10+2” rulemaking.

“It will be disruptive for the first 90 days and then everybody will like it,” said Jason Kohler, director of business development at IES.

Cost And Complexity. Many companies that depend on import trade have voiced strong concerns that the new rulemaking will add significant cost and slow down their supply chains because of the extra time needed to collect all the required data from foreign suppliers. Some data elements are not normally collected from suppliers, can be hard to track down or are not known early in the process. A last-minute order, for example, may lead to a container being filled from a different production line than normal, there may be no consignee to list because sometimes goods are not sold until they are on the water, or the exporter could be the importer of record and hold the goods in a warehouse until they are sold. Importers also may not know the container stuffing location, consolidator, country of origin, or six-digit harmonized tariff number 24 hours prior to loading.

And consider non-product transactions such as shipments of samples, repairs, marketing materials and intra-company components. Those items typically do not reside on an enterprise resource system because they are not part of a contract. This makes it difficult for the importer to know

The rule will cost industry from \$390 million to \$630 million per year for security filing transaction costs or transmission fees charged to importers by cargo agents, the potential for supply chain delays and the estimated costs to carriers for transmitting the additional data to CBP.

U.S. Customs and Border Protection economic analysis

No single service provider has geographic or technological reach to handle security filing themselves

	Vessel carrier	NVOCC	Customs house broker	3PL	Consolidator	Security filer
AMS	Yes	Yes	No	Yes	No	Yes
Security filing	No	Yes	Yes	Yes	No	Yes
Customs clearance	No	No	Yes	Yes	No	No
Office structure	Global	Global	Local	Global	Global	Global
Systems access	Global	Global	Local	Local	Global	Global
Services importer	Yes	Yes	Yes	Yes	Yes	Yes
Services exporter	Yes	Yes	No	Yes	Yes	Yes

Source: TradeTech.

the parties to the supply chain, logistics veterans say. When the owner of a gadget in India ships it back for repair, the U.S. company is technically the importer even though it has no control over that part.

Consolidators, in particular, are likely to advance their cutoff times for receipt of shipments to allow importers sufficient time to transmit the security filing so they don't have to unpack a container in the event CBP rejects a report for being incomplete. The extra lag means that importers are likely to increase their inventory levels.

Study 'Understates' Costs. The CBP and Office of Management and Budget analysis of the rule's economic impact predicted that shippers would likely have to add another day to their normal transit schedules to account for the information gathering during the first year of implementation, and experience an average delay of 12 hours in the second year onward.

According to CBP's economic analysis, the rule will cost industry from \$390 million to \$630 million per year for security filing transaction costs or transmission fees charged to importers by cargo agents, the potential for supply chain delays and the estimated costs to carriers for transmitting the additional data to CBP. The total present value cost calculation is estimated at \$3.3 billion to \$5.3 billion for the next 10 years, based on assumptions about the most likely scenarios.

At the micro level, CBP estimates the security filing will add \$24 to \$38 per import transaction and that filing costs will average \$10 to \$50 per transaction.

Some sources say their companies have determined that the rule will add two or more extra days to their supply chain. One large manufacturer estimates that each extra day equates to about \$300 million in inventory carrying costs.

They are frustrated that after years of optimizing the supply chain to move cargo at great speed and reduced cost, shipments

must now wait for information to catch up with them.

Traders also are footing the cost to build or modify their systems, which don't have fields for the new data requirements.

An executive for a high-tech company who is not allowed to speak for public attribution complained that the OMB's economic analysis only dealt with inventory carrying costs and ignored opportunity costs from lost sales, handling and storage costs, adjusting production schedules and cash flow.

The major soft cost will be training hundreds of thousands of people in a short span of time, chimed in Bryn Heimbeck, president of TradeTech, a Seattle-based supply chain and transportation management software provider.

As for inventories themselves, the study calculates the cost of a one-day delay in the supply chain as 0.06 percent to 0.1 percent compared to 0.8 percent in a 2001 Purdue University study. U.S. Trade Representative Susan Schwab told reporters following the November ASEAN meeting in Singapore that every day goods rest waiting for customs clearance is equivalent to a 1 percent tariff — roughly a 10-fold difference from CBP's economic impact analysis.

The executive also said OMB's estimate for information collection costs only covers filing fees that importers will pay intermediaries, and not costs associated with generating a data pipeline to pull together all the information from suppliers. Another flaw is the focus on potential delays for consolidated shipments without recognizing that single-shipment loads will also face delays as carriers move up cutoff times to make sure the security filing has been properly transmitted.

“So this study understates the costs by a very high order of magnitude,” the high-tech trade manager said.

CBP acknowledges difficulty determining hard figures for its cost-benefit analysis because of the challenge evaluating to what

extent the “10+2” rule could reduce the possibility of a hypothetical nuclear or biological attack. According to its analysis, the proposed regulation would need to result in avoiding one nuclear attack during the next 600 to 1,100 years just to break even.

Other Issues. Aside from the cost, the trade community is concerned about technical, process and legal issues.

A controversial element of the “10+2” proposal is the requirement that the report link the country of origin, manufacturer and tariff number as a package the way they are on the customs entry form. CBP did not adopt the recommendation last year by its Departmental Advisory Committee on Commercial Operations, or COAC, to move up the customs entry process to allow importers to make one filing for customs entry and security purposes, thereby streamlining the compliance process and justifying an early notice of conditional cargo release. Importers complain they are essentially paying third parties to file two similar forms since most of the data sought on the security filing is documented on the entry.

“The potential programming costs to the importing community are astronomical,” Susan Kohn Ross, a Los Angeles-based trade attorney for Mitchell Silberberg & Knupp LLP, wrote in a client alert.

“Despite this fact, Customs continues to ignore the practical suggestion to write an algorithm that would cause its Automated Targeting System to make all the possible matches and determine whether any combination created a risk. If so, that shipment would be subject to inspection. Instead, Customs insists on putting the burden on the trade to link the three data elements at the line item level when filing,” she said.

Another big issue is that seven of the 10 data elements are not part of the data set espoused by the World Customs Organization, which is trying to promote a global standard for trade security to ease the burden for companies operating in multiple countries.

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director of business development,
 IES

Data is decentralized and confidential

Importer's responsibility to provide	Available at	Confidential
Manufacturer, name/address	Origin	Potentially yes
Seller name, name/address	Origin	No
Buyer name, name/address	Origin	Potentially yes
Ship to name, name/address	Origin	No
Container stuffing location, name/address	Origin	Potentially yes
Consolidator, name/address	Origin	No
Importer of record number	Destination	Yes
Consignee number	Destination	Yes
Country of origin	Origin	No
HSUSA (6) (Cargo classification number)	Destination	No

Source: TradeTech.

Many individuals and organizations have pushed for an account-based filing system in which top-tier trusted shippers or repetitive filers periodically store data in the importer’s electronic account with CBP. That would spare companies from having to key in the same information and only put in the data that is different for each shipment. They say that providing that type of benefit is the whole purpose behind the Customs-Trade Partnership Against Terrorism.

The industry also wants some kind of electronic confirmation from CBP that their filings have been accepted in its system so the carriers can safely load their freight on the vessel. As it stands now, CBP will notify the importer that it has received the security filing, but won’t show the actual data elements or the identity of the party who filed them. Importers say they want the power to correct mistakes in the forwarder’s filing. The concern is that multiple parties in the supply chain are submitting information to the agent on the importer’s behalf, but the importer can’t check it for accuracy. Industry professionals also say carriers need independent assurance that a security filing has been transmitted because otherwise it opens the possibility of a mix-up that could affect many shippers, especially for a container with a mixed load.

NVOs, therefore, have agitated for some independent confirmation to avoid the risk of unloading the vessel or turning the goods around to the packing station.

COAC has pointed to the Census Bureau’s Automated Export System as a good model. It sends a unique identifier (the ITN number), confirming that the export declaration has been received. Then the carrier could query the bill of lading and associate it with the security filing code to confirm it is cleared.

Logistics professionals say it is critical for importers to more closely collaborate with suppliers to avoid any surprises.

Trade consultant Beth Peterson recommended that importers insist that agents send them or their broker a copy of the filing and think about ways to audit the information.

Shipment pre-alerts or pre-advice will no longer be optional and bill of lading details must be obtained by the importer or its agent prior to container arrival at the foreign port, Susan Pomerantz, vice president for trade management consulting at JPMorgan Global Trade Services, warned in the company’s February customer newsletter.

Value To Business Process. Several consultants and trade management software providers said the trade community should look beyond cost and realize that the rule will serve as a catalyst to improve business process in much the same way the 24-hour rule did several years ago.

Container lines, NVOs and importers all complained that the 24-hour rule would be expensive, difficult and lead to shipment delays. Instead, it’s widely believed the advance manifest requirement has helped improve efficiency by forcing the foreign shipping entity to produce and deliver the bill of lading faster to the carrier, which uses the information to produce the electronic manifest. Customs brokers in the United States, in turn, benefit because they no longer have to wait for the B/L to complete the customs entry summary and clear the goods out of the port after the vessel arrives, as often occurred in the past.

The security filing “is going to force (businesses) to capture more visibility into their supply chain and could really assist them with their logistics flow,” said Sam Banks, a former deputy commissioner at U.S. Customs and now an executive vice president at Sandler & Travis Trade Advisory Services.

Importers have long clamored for increased knowledge and predictability for their inventory in transit, and Heimbeck

COAC recommends '10+2' changes

TUCSON, Ariz.

A key federal advisory panel on Feb. 13 asked U.S. Customs and Border Protection to phase in the operational rollout of a new import cargo security measure for advance data and publish it as an interim rule rather than a final rule to ensure smooth implementation.

The government is collecting comments on its so-called "10+2" proposal that would require importers to electronically provide details about a shipment's chain of custody 24 hours prior to vessel departure overseas. Ocean liners would have to submit container stow plans and status messages. The rule is controversial because it would require most companies to reconfigure business processes, invest in new information technology connections and possibly delay shipments until they can collect some of the data elements they currently don't receive in the transaction process.

CBP has stressed in the run up to the rulemaking process that it intends to allow for a one-year learning curve until full enforcement kicks in.

The Commercial Operations Advisory Committee stressed in an eight-point letter that the phase-in period should also apply to the actual technical mechanics of implementation so that importers, their agents and CBP can align their systems to properly transmit and receive the information without glitches that could disrupt commerce. It recommended that the effective date for all filers be 12 months from the time of the final rule, subject to implementation progress.

COAC, meeting in Tucson, Ariz., also said an interim final rule would allow industry to see the details of the data requirements and give them time to develop or adapt their systems and software to properly transmit the filing.

An interim final rule has the full force and effect of law, but it allows stakeholders to continue submitting comments that the agency will consider before deciding whether to issue a revised final rule or confirm the interim rule as final.

CBP Commissioner Ralph Basham assured the 20-member industry body that "we recognize that we need to do this in an appropriate way (and) establish a timeline that does not cause failure" for CBP or individual companies. He promised that the agency would continue to work with the trade community on implementation.

Christopher Koch, president of the World Shipping Council, repeated a request voiced by others that CBP find a way to start the dialogue on data formats and other IT requirements even as the agency maintains silence on the rule, as required by law, during the open comment period.

COAC's other recommendations are:

- Eliminate use of liquidated damages to penalize companies for inaccurate or late security filing because the threat of "no load" messages preventing a shipment on a vessel is a sufficient penalty and deterrent.
- Avoid "linking" the data elements in the importer security filing. Instead filers should transmit all required information in an established format, allowing CBP

to manipulate the data to best achieve security screening.

- Provide a timely confirmation message (with a unique identification number issued) indicating that the security filing has been completed, filed and accepted. Industry wants this so that foreign shippers and carriers have confidence to move ahead with loading a shipment without fear of future penalty.

- Clearly describe the type, length and definition of each required data element in the regulations and any accompanying instructions, so that filers may properly program their IT systems to accommodate the security filing.

- "10+2" and the World Customs Organization's SAFE Framework of Standards for supply chain security should be harmonized.

- Clearly define the carrier messaging requirements.

- Conduct a "more realistic and collaborative cost benefit and feasibility study" because total industry costs are understated in the Notice of Proposed Rulemaking.

COAC indicated that it was not objecting to CBP's strategy of collecting more advance import data, but simply seeking process changes.

Bruce Leeds, a senior import-export manager for Boeing and COAC's chairman, said the panel reserved the right to call a special teleconference meeting on March 14 to determine if COAC needs to submit more detailed recommendations before the comment period closes on March 18.

Rich DiNucci, CBP's "10+2" program manager, said he is considering holding a public roundtable with one or two companies who are sharing import data with CBP as part of the Advance Trade Data Initiative to test transmission methods. The companies have volunteered to share their experiences so far to help give the trade community a comfort level with the filing process, he said.



Basham



Koch

agreed that the government mandate for this information would push forward track-and-trace capabilities that have largely been the domain of giant companies like Target to the import market at large.

Today, many companies do not bother tracking their purchase orders. Others may have trade compliance systems they have not integrated with operating systems, small carriers with limited data exchange capability, or freight forwarders with systems in which status messages are often based on estimated arrival times instead

of the actual location of the cargo. And the information is often at the inventory level rather than the shipment level.

The Holy Grail of logistics is to know exactly what shipments are in the pipeline and how many days they are from their destination. A manufacturer may notify its customer that their order is scheduled for ocean transport on a particular day, but a black hole often exists about whether the ship is on time, whether the box made its rail connection, if it got hung up with Customs inspections or other events.

Logistics experts say that true inventory visibility can help companies respond more quickly to the ebbs and flows of consumer demand, improve dwell times and reduce inventory levels. The sooner an importer can discover a problem with a shipment the sooner it can make contingency plans for reordering, diverting or expediting the goods.

And further detail can help an importer sort out which container in a multi-container shipment on the dock is the one with the out-of-stock, or seasonal merchandise that

needs to be rushed to the store and which containers can be picked up later.

“Up until now, people just said it was too difficult and expensive. But the business community is going to benefit from a substantial business process improvement as a result of that implementation” after initial costs are sorted out, Heimbeck said in a phone interview.

Importers could doubly benefit if CBP fed back to importers all the container status messages that the carriers also submit, similar to how NVOs now receive feedback on vessel arrival times and other information captured through AMS, he added. They would get a full picture of their cargo in a single platform without having to go to each carrier’s Web site or multi-carrier portals.

“We’re imagining that people will actually use this as a tool so they have visibility of all their inventory in a carrier-indiscriminant technology and use that data to make cargo management and expediting decisions,” Heimbeck said.

Redundancy. Another potential business benefit of “10+2” is that it could streamline the process of creating the customs entry, according to officials at software provider IES. The Midland Park, N.J.-based company, which provides an integrated suite of international transportation management tools for intermediaries, plans to take advantage of the shared data requirements between the security filing and the entry summary to automatically pre-populate data fields and minimize keystrokes in the entry system.



Kevin Gavin
vice president
of supply chain
management,
IES

“When you add up the AMS and ‘10+2’ data, you really have a customs entry. That’s quite an advantage if the broker controls the data and a disadvantage if they don’t.”

Scope is essentially full customs clearance

AMS	10 + 2	ABI
M. B/L and H. B/L	Manufacturer, shipper name/address	Entry number/type
Voyage number	Seller name/address	Port of entry
Carrier SCAC	Container stuffing location	Filer code
Cargo quantity/measure	Buyer name/address	Surety number
Last foreign port of call/date	Ship to name/address	Exporting country
Port of loading/date	Importer of record number	Foreign port arrival
Date of vessel sailing/port of loading	Consignee number	Entry value
Port of discharge/date	Country of origin	HSUSA (10)
Container number/seal number/container size	HSUSA (6)	Other agency requirement
Vessel Name/Flag/IMO	Consolidator name/address	
Hazmat code	Container stow plan	
Consignee name/address	Container events	
Shipment type (LCL/FCL)		
PTT/I.T. Information		
Transportation Entry Type (I.T./T&E, FOB)		
First Foreign Place of Receipt		
Commodity description (free form)		

There will be no standalone security filing.

Source: TradeTech.

“We won’t let that data system go to waste,” said Kevin Gavin, vice president of supply chain management at IES. The firm’s technology does the same thing with AMS data to help populate its import breakbulk brokerage system and then link the message to the entry process. Officials say their work essentially is limited to building out the AMS application to support 10 more data elements.

“When you add up the AMS and ‘10+2’ data, you really have a customs entry. That’s quite an advantage if the broker controls the data and a disadvantage if they don’t,” he said.

Four of the security filing elements — importer of record number, consignee number, country of origin and Harmonized Tariff Schedule (HTSUS) number at the 10-digit level — are identical to elements submitted on customs entry or entry summary forms.

CBP proposes to reduce redundant transmissions by allowing importers and brokers to submit these elements once, via the same transmission, for their entry or entry summary. The rule says the agency will pull the four data elements from the filing and link them to the entry. The move is a nod to COAC, which recommended that CBP allow entries to be filed earlier along with a couple extra pieces of information.

But there is no way to implement the process because CBP has indicated it is not prepared to do the necessary programming in ACS or ACE to accommodate the change, according to Peterson. ACS is on its final legs and agency officials have said they

don’t want to do anything that would impact the rollout of ACE, which means ACE will eventually have to be programmed a second time if early entry is actually implemented, she said. Other trade compliance experts said the provision is useless without the programming, and has created confusion that the security filing may substitute for the entry process.

And CBP has also given no sign that it will release goods sooner than the current timeframe of five days prior to vessel arrival. That is raising questions about whether importers would have to retransmit the entry to get the cargo released, thereby doubling the workload for the broker and eliminating any benefit for early filing.

Security Or Punishment? The rationale behind the security filing is to enhance the computerized decision support tool that relies on limited ocean manifest information submitted by the liner companies to help identify shipments requiring additional scrutiny. The Automated Targeting System uses hundreds of rules to check manifest and other data for every container heading to the United States and assigns a risk score to each cargo shipment. High-risk containers or manifest information that is incomplete or not filed 24 hours prior to loading can trigger a “no-load” message from CBP.

But trade compliance professionals note that the rule refers to financial penalties rather than a “do not load” sanction for importers who submit late or inaccurate “10+2” data. Many industry practitioners believe that creates a scenario under which a

container associated with faulty information can still be loaded on a vessel and shipped to the United States, essentially undermining the purpose of the rule to use additional screening criteria to catch suspicious cargo before it leaves the foreign port.

The trade community was caught off guard by the provision setting penalties at the value of the goods because CBP never discussed the penalty option with industry working groups helping to develop the rule, industry sources said. They assumed that CBP simply wouldn't allow a container with a faulty security filing to come to the United States, especially after the COAC recommended that the penalty for non-compliance should be a "no load" message. The 20-member industry body felt that delaying a shipment was sufficient motivation for shippers to submit timely and accurate information, and fines are unfair because importers have no control over the message filed by the exporter or overseas freight forwarder.

"The importer has no control over this (process) even though they have full responsibility," said Petersen, head of San Francisco-based Beth Peterson Enterprises Inc.

"The potential programming costs to the importing community are astronomical."

Susan Kohn Ross
trade attorney,
Mitchell Silberberg
& Knupp LLP

Some import professionals say it's inconceivable that CBP won't use the additional data to halt shipments overseas, aside from the "do not load" option. Incomplete or faulty information will raise a shipment's score and likely push it past the pre-set threshold for triggering container exams.

But that security layer is different from an automatic "do not load" message.

Although 85 percent of inbound cargo comes through 58 foreign ports where selective inspections can be conducted at U.S. request under the Container Security Initiative, the vast majority of high-risk shipments still undergo X-ray and radia-

tion exams at U.S. ports.

"It's kind of obvious that you would be able to issue a DNL order, but it's not stated clearly in the rule," IES's Kohler said.

Late word from industry sources close to CBP is that agency officials have privately indicated that there will be a way to issue a "No Load" instruction through the same process used to stop shipments in AMS that don't conform to the 24-hour manifest rule. How agents and carriers will coordinate their filings to avoid the risk of penalties is still an open question, they say.

Sureties. The surety industry is also busy analyzing the impact the new rule will have on companies that issue customs bonds and the people who buy them.

Insurance companies were surprised by the requirement that every importer or their agents obtain a bond to guarantee proper filing of the electronic data. CBP consulted with various trade associations involved in international goods movement, but did not talk with any customs bond surety groups or mention the idea at meetings of the Trade Support Network advisory panel, according to the rulemaking and industry officials.

"What's the point of a bond? Collecting

Broker evolution

Brokers could adopt collaborative work model to maintain their role in security, entry filing process.

By ERIC KULISCH

During development of the U.S. government's "10+2" proposal, some questioned whether customs brokers would become marginalized since most of the data points on the entry could be completed by parties at the point of origin.

But entry filing remains customs business that can only be conducted by a licensed broker. The real danger is that customers could abandon brokers who are unable to keep up with the fast-moving requirements for "10+2," a proposed advance cargo security measure to collect detailed information about containerized imports.

An industry shakeout or consolidation could affect brokers large and small alike. In either case there will be companies who adapt quickly and laggards that don't make the transition, said Bryn Heimbeck, president of TradeTech, a supply chain and transportation management software provider. He noted that larger companies

may have the resources to upgrade their operations, but start-ups and smaller companies often are more nimble.

Many brokers also operate as forwarders and have the relationships with the trucking firms and other agents that pick up the merchandise from the supplier. If they don't control the information at origin, IES, another transportation management software provider, said it expects to set the broker up as a notify party to the transaction to get the data it needs, as it does with Customs and Border Protection's Automated Manifest System (AMS).

The software developer is making sure that only the trusted agent can access all the information. Usually the broker has the relationship with the importer and does the customs clearance, but under the ruling the carrier or non-vessel-operating common carrier that files AMS can also submit the security filing. A large por-

tion of the security filing is simply more detailed AMS data identifying the shipper and consignee.

IES will let the broker build a profile of its repeat suppliers so that the importer only has to supply the information one time and the report can be completed by selecting the specific template, thereby minimizing keystrokes and potential errors. The broker will only need to chase down information for new shippers or consignees.

Heimbeck, whose company serves about 300 NVO customers, envisions brokers adopting a collaborative work model — or virtual assembly line — to maintain a role in the security and entry filing processes. TradeTech also has the ability to mask certain aspects of the filing from other participants — such as hiding the name of the buyer's manufacturer from the importer to prevent back-channel sales. The system identifies who is entering an account and what information they should be given access to on a customer by customer basis.

"I think we're at a time when workflow technology is coming of age, where people working on a single computer can see information and add additional data to a core data set in a Web-enabled system," Heimbeck said. The new work model would have the agent at origin key information into the system for the security filing and save it, where it becomes available to the broker to

liquid damages after the goods have been shipped to the United States doesn't get us where we want to be," said trade attorney Lee Sandler, who represents bonds issuers.

Customs bonds are intended to guarantee that an importer complies with customs laws and pays duties, fees and taxes owed to the U.S. government after the goods are released. Importers prefer to use bonds rather than plunk down cash deposits because it ties up less of their capital. Premiums are generally inexpensive because of the low-risk sureties normally associated with customs bonds and the competitive bond market.

The rule potentially creates a whole new class of bondholders — the foreign freight forwarder — and substantially increases the number of bonds that will be required. Foreign corporations who set up registered agents in the United States to do their own importing and afterwards sell the goods "delivered duty paid" will also need bonds.

And the ruling doesn't allow intermediaries to use their existing bond for the importer security filing. Brokers who intend to transmit the security filing would need to update their bond to reflect the new activity.

go line by line and classify the cargo. This method eliminates manual data entry steps because it drops the security filing into a nearly automated secondary process for the entry, complete with stored data fields such as the broker ID number, port of entry and other repetitive data.

A secondary evolution in broker business could subsequently follow, Heimbeck said. Under this model, the broker would be tasked with pre-classifying the purchase order before the products are even made. The importer could send the broker a copy of the purchase order spreadsheet and the broker uploads the tariff codes to the shared system, where they are available to the foreign shipper to complete the security filing and transmits the report. Some sophisticated importers already classify their purchase orders in advance.

Putting the broker at the beginning of the process allows for maximum time saving because the information is ready to be sent to Customs as soon as the foreign shipper gets the information in its systems — even while production is going on, Heimbeck said.

It also adds more buffer time to make sure the filing gets done without endangering the ability of a shipment to get on the next outbound vessel. Many manufacturers are slow at producing commercial shipping documents, and take advantage of the long ocean voyage to get them to the customs

"It's one thing to write a bond for a U.S. importer located in the United States. It's a different set of underwriting criteria to underwrite that same bond for a foreign freight forwarder in Bremerhaven. There are probably more questions in this document than there are answers," said Michael Davenport, president of the International Trade Surety Association.

Surety companies are trying to figure out who is supposed to have a bond, how to provide bonds to foreign agents, how to underwrite the new risk, whose bond is liable and whether rates will increase.

Industry officials said they need more clarification from Customs on the bond requirements because they have no way to determine their increased exposure and how to spread the risk across their customer base.

The requirements need to be carefully spelled out by CBP to limit the types of infractions that can affect the bond, said John Michel, president of Trade Risk Guaranty.

"If you're going to add more liability to the bond, then define it. Once we know the language, then we can analyze whether it justifies a change in rates," he said on the floor of the AAIE expo hall.

broker. While they've sped up issuing the transportation instructions for the carrier bill of lading, they still lag in producing the commercial invoice and packing list used to complete the customs entry.

Under the 24-hour pre-filing requirement time differences between continents could slow the import-export process, especially because so much cargo moves at the last minute to meet rapid fulfillment schedules. U.S.-based customs brokers are often asleep when shippers in Asia will file the documentation. Brokers, who previously used vessel transit time as a buffer to complete their entry work, may be hard-pressed to complete all the security filings they receive in a day, and if there is bad weather or an employee calls in sick the workload can spill over until the next day. The problem is most acute for shipments produced near major ports compared with those elsewhere that travel a few days on feeder vessel before being transloaded at the main load port, where the security filing requirement kicks in.

Some brokers may incur extra cost to put on an extra shift to cover more hours in the day and meet their importers' needs.

"I think what you're going to have to see is a process change that allows the shipper to compress the time so they can produce a document in far less time — a few hours to two days instead of seven to eight days," Heimbeck said.

"Sureties don't make money by restricting the pool of principles they sell bonds to. If you're gonna have bonds, it's gonna have to be a program that you can underwrite in a way that bonds are freely available and at low cost so sureties can make a profit," said Sandler, a partner in Miami-based Sandler, Travis & Rosenberg.

All Systems Go? Meanwhile, CBP is reassembling the team of field officers and targeting personnel who helped design the 10+2 proposal to help prepare technical changes to the agency's systems. The goal is for data to be visually appealing and integrated with the Automated Targeting System that flags high-risk containers for inspection, CBP program manager Richard DiNucci said at the AAIE conference.

CBP is also developing training and outreach programs for analysts on how to understand the new data and explain compliance to importers, carriers and transportation intermediaries responsible for transmitting the security filing, he said.

Six carriers and 35 to 40 importers are voluntarily submitting early data to help test the interoperability of the agency's systems, data formats and bandwidth capability to

He predicted that brokers, especially small and medium-size ones, will then push their customers to give them purchase orders in advance so they can move to pre-clearance and relieve a lot of pressure.

"I think the collaborative model is most likely because it involves the least amount of change, but over the longer term I think you'll see more and more people move towards the pre-classification model," he said.

The "10+2" rule will redefine what it means to be a broker, according to the technology executive. "Instead of being a passive information collector, they're going to be a direct collaborator at the time of shipment and become a partner in the process of forwarding the cargo at origin."

"Some of our customers understand this is a seminal event that they need to worry about," said Kevin Gavin, vice president of supply chain management at Midland Park, N.J.-based IES. "They're looking to us, and asking, 'How am I going to stay in charge with my importer of record? And we're saying, 'Don't worry, we'll make sure you have a service that you can stay in charge with.'"

"It's going to take a little bit of time to streamline the process, but in six months or a year it's gonna be a benefit," said Jason Kohler, IES's director of business development.

process the commercial feeds and route the data into its targeting system. Under the closely held Advance Trade Data Initiative (ATDI), Customs had received 26,000 security filings, 425 vessel stow plans and 45 million container status messages from its industry partners as of late January, DiNucci said.

Litman publicly raised concerns at the conference that CBP has banned discussions with the trade about IT integration during the legally required quiet period when the agency is accepting comments and drafting its final rule. Successful implementation of the rule under expected timelines will be very difficult unless potential systems problems for filers and the agency can be resolved, said Litman, who pushed for a firewall of some sort to allow IT consultations to proceed while the policy blackout is in effect.

"The trade won't get a good look at how this will be programmed until the final rule comes out, and I don't think that's good for either party," he said.

Software developers say they have all the requirements they need to build the screens and workflow, but they can't complete their products until the final rule is out.

Litman also suggested that CBP wait to develop the new security program in the Automated Commercial Environment so that CBP and trade won't be burdened with double programming within two years when the new IT system for administering commercial operations is fully available.

Banks, who has dealt with customs issues from both sides of the regulatory arena, predicted that the "10+2" implementation could take longer than one year to get everybody on board and make the process predictable.

"This will be very tough for both CBP and industry to do globally," the ex-Customs official said. "If they are intending a big bang theory this could be very disruptive. They need to phase it in and refine it before they mandate everything."

Hundreds of thousands of companies will need to get signed up or certified to work on either ABI or AMS and then get power of attorney from the importer to file on their behalf.

There are about 8,000 NVOs, customs brokers (2,000 to 3,000) and self-filers, connected to CBP via one of the two existing systems, according to industry experts.

"Certifying them to exchange the data sets means CBP is going to have to onboard 30 systems a day every day for 248 consecutive business days. And then those people are going to have to turn around and onboard 300,000 importers (1,200 per day)

and their shippers. This is a monumental task," Heimbeck explained.

Taking in information streams from that many importers led Banks to worry that the ATDI exercise wasn't large enough to determine whether CBP's legacy systems can withstand the new traffic levels.

"CBP took a very rational approach, but there's always unknowns. You've just got to be prudent when taking on these big systems issues," especially when the entire import industry relies on the instantaneous performance of the agency's systems to keep trade flowing, Banks said.

ACE, the agency's evolving IT system to monitor, control and expedite imports and exports, was actually developed because of concerns that ACS is not robust enough to handle the projected increase in entry filings.

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The rollout of the electronic truck manifest in the past few years is a likely template for how CBP will approach the security filing's technical challenges, he noted.

CBP began the e-manifest program in Blaine, Wash., took the system back down multiple times when technical glitches occurred, and gradually expanded to other land border crossings as problems were ironed out. Once the system was in place, truckers were able to participate on a voluntary basis and data was properly coming in, CBP phased in mandatory use region by region to keep from overloading and crashing its computers. The toughest part of the process, which took more than a year longer than expected to complete, was getting different CBP software systems to talk to each other. And last year CBP opted

for a gradual deployment of its ACE Entry Summary, Accounts, Revenue module in 2009 rather than activating it overnight and requiring all importers and brokers to immediately switch from existing reporting systems. CBP changed its mind after industry partners recommended a slower deployment to make sure agency and corporate systems could handle the new data flows without disruption.

"But in some ways truck manifest was a piece of cake compared to 10+2," Banks said. "It's a lot of data and it's a lot of players."

That's why Banks advocates against flipping the switch all at once for the entire trade. A one-year informed compliance program of reminder letters about mistakes will help the industry get accustomed to the new rules before the penalty phase kicks in, but it won't do anything to keep CBP's trade processing system functioning smoothly and prevent breakdowns, he said.

"Otherwise they'll end up with inaccurate information and system (outages)," he said. "They should give a real acid test to '10+2,' but nowhere in the NPRM do they talk about a progressive, incremental implementation plan."

He recommended that CBP phase in the program by taking a volunteer cross-section of large and small companies from various industries and begin real data exchange with them to perfect the system. As operations improve, Banks suggested, the program can open up to more companies and eventually get to universal, mandatory coverage.

In other respects the rule should be easier to implement than e-manifest because it mostly seeks existing data supplied to Customs, but brings it earlier in the process. And, unlike ACE truck manifest, it doesn't involve building a whole new system.

"This isn't something new for CBP to do. They've built these systems and brought industry along in a rational manner in the past. My guess is they'll do the same thing this time, but industry wants some assurance that that's going to happen," Banks said.

As long as CBP is able to continue to show progress towards its goals it should be able to satisfy Congress, he added.

Once all the comments are received, staff from various CBP offices will draft responses and make adjustments for the final rulemaking. They will be isolated at an off-site location so they can work on the 10+2 ruling without distraction.

A final rule could be wrapped up by April or May, DiNucci said, but many industry officials believe the process will take longer than that. ■