

Japan Machinery Center for Trade and Investment

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Border Security Regulations Branch
Office of Trade, U.S. Customs & Border Protection
799 9th Street, N.W., Washington D.C. 20001

Re: Agency: Customs and Border Protection, Department of Homeland Security
Docket Number USCBP-2007-0077

Comment on Interim Final Rule, Federal Register Vol. 73, No. 228, November 25,
2008, 19 CFR Parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149 and 192
Importer Security Filing and Additional Carrier Requirements

The Japan Machinery Center for Trade and Investment (“JMC”) hereby submits comments on the Interim Final Rule issued by the Bureau of Customs and Border Protection (“CBP”), Federal Register Vol. 73, No. 228, November 25, 2008, 19 CFR Parts 4, 12, 18, 101,103, 113, 122, 123,141, 143 and 192, “Importer Security Filing and Additional Carrier Requirements.”

JMC is an association of 300 firms that manufacture and export machinery products worldwide. It includes most of the major companies in Japan that export electronics and machinery goods to the U.S.A. JMC was established in 1952 under Japan’s Export and Import Transactions Law to represent the interests of Japanese machinery exporters.

JMC understands that importance of strengthening security relating to international cargo. To that end, JMC has assisted Japanese exporters understand and comply with the requirements of the U.S. security programs including the manifest 24-hour rule, and C-TPAT. JMC strongly recognizes the importance of balancing trade facilitation and cargo security.

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JMC's member companies have been striving to ensure compliance with the Importer Security Filing ("ISF") since the Interim Final Rule was published this past November. The ISF, however, requires both importers and exporters to change substantially their traditional practices in the supply chain operations, it is not so easy for the importers and exporters to adapt themselves to the ISF. Particularly the current economic crisis makes it much more difficult for JMC member companies to make preparations to achieve full compliance with the ISF. We are very concerned about the possibility that the Interim Final Rule will place excessive burdens on companies involved in international commerce and will create disruptions in the efficient flow of international commerce if the restraint in enforcement of the rule is relaxed in January. In view of foregoing, JMC strongly recommends that CBP address the issues described below.

Before proceeding, we would like to thank CBP in advance for taking the following comments into account.

Comment 1

- Extending the comment period and the flexible enforcement period

According to a survey conducted by JMC this past May, while 22.4% of the respondents said that they would be able to achieve full compliance within six months, 32.7% answered that they were uncertain if they could achieve full compliance in time. (Only 0.9% responded they would be late for the deadline) The reasons why the Japanese exporters do not believe that they can achieve full compliance with the rule in time are as follows;

- The exporters cannot identify problems to be solved and tasks to be done because there are ambiguous definitions and questions related to the implementation of the ISF found in the interim final rule.
- While building a computer system or re-programming is needed, exporters cannot configure or program of a system because of the ambiguities and questions stated above. The exporters want to clarify the ambiguities as much as possible because building a system or programming entails huge costs.(a certain member company answered in our survey that its system costs two million dollars)
- There are still some US importers who lack sufficient understanding of the ISF. Though some of the JMC member companies have tried to offer assistances, they

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have not had effective discussion with those US importers toward achieving full compliance.

- It takes a long time to adjust the process involving the ISF concerning cooperation with the business partners involved in the supply chain.

For the reasons above, we request CBP take following measures;

Extending the comment period to the end of this year at earliest in order for trade community to provide CBP with wide variety of information needed to clarify what should be done in implementing the ISF. We would very much like CBP to share the problems identified by the comments with trade community.

Extending the flexible enforcement period, and delaying imposition of penalties until CBP confirms that a large majority of importers have achieved ready compliance with the ISF requirements prior to publication of the Final Rule.

Comment 2

- Requirement of 24 hours prior to loading aboard

8 data elements of ISF-10 must be submitted 24 hours prior to loading aboard at foreign port of export. Importers, actually however, are assumed to submit the data based on the information sent from exporters 2-3 days before loading aboard. Please note the fact that cargoes are not ordinarily loaded onto vessels at the point of exporters' providing the information. In addition, neither importers nor exporters can know the time when the cargoes are actually loaded onto the vessels. Therefore importers have no other choice but to file the ISF 8 data based on "estimated" or "scheduled" time. So JMC requests that the ETD (Estimated Time of Departure) should be allowed to be used for the requirement of 24 hours prior to loading.

Comment 3

- Problems related to Bill of Lading ("B/L")Number

The following problems have arisen concerning B/L number. Unless those problems are solved, we are unable to comply with the ISF.

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- Many exporters can not obtain B/L number prior to loading aboard the vessel. Even if they obtained it, they were not given enough time to timely inform the importers of the B/L number.
- Sometimes US importers request their exporters to inform them of the B/L number containing a SCAC (Standard Carrier Alpha Code). However the SCAC is not contained in the B/L number provided by some ocean carriers and most NVOCCs. Furthermore, most of these ocean carriers and NVOCCs refuse exporters' requests to issue the B/L number containing the SCAC.
- Mismatching of the B/L number and the ISF occurs in the case that an exporter consigns its cargo to a NVOCC and then the NVOCC consigns the cargo to another NVOCC who carries the cargo as a co-load. The second NVOCC performs the AMS filing with its own B/L number, not with the B/L number issued by the initial NVOCC. An importer performs the ISF with the B/L number issued by the initial NVOCC. This causes the mismatching of the B/L number and the ISF.

Comment 4

- Flexible data element (Manufacture (supplier) name/address, Ship to Party, Country of origin, Commodity HTS-6, Container Stuffing Location and Consolidator (Stuffer) name/address)

According to our survey conducted by JMC this past May asking which data element would be problematic in collecting prior to loading, 29.5% indicated the HTSUS, 19.2% answered country of origin, manufacture (Supplier), and container stuffing location.

HTSUS number

Definition of commodity item stipulated at 6 digits HS number is common globally. However it seems to be difficult for importers to determine the appropriate HTSUS number prior to loading where interpretation of tariff classification differs between exporting country and importing country, or when a shipment is made along with an urgent design change. Though importers are allowed to update HTSUS number data 24 hours prior to arrival at US port, they might fail to complete updating the data before the deadline. JMC requests CBP not to impose penalties even if CBP discovers a discrepancy of HTSUS number between the ISF and Entry if there is not evidence of fraud and the correct HTSUS number is filed in the entry summary.

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Country of Origin

Modern high precision machinery products are fabricated using hundreds or thousand of parts and components that are widely procured from different sources, therefore identifying the country of origin frequently is delicate and a complicated issue. Though importers are allowed to update country of origin data 24 hours prior to arrival at US port, they might fail to complete updating the data before the deadline when a shipment is made along with an urgent design change. JMC requests CBP not to impose penalties even if CBP found a country of origin discrepancy between the ISF and the Entry if there is no evidence of fraud and the correct country of origin is filed in the entry summary.

Manufacture (supplier) name / address

For those Japanese exporters who outsource production by using contract manufacturers or original design manufacturers, the concerns regarding business confidentiality are serious. As a general rule, exporters do not wish to disclose the manufacturer's name and address to importers. In fact, there are cases where a manufacturer refuses to disclose its name to anyone other than the exporter. In these cases, the exporter cannot provide the importer with name and address of the manufacturer.

The Interim final rule allows for filing supplier's name and address in lieu of manufacturer's name and address. From the importers' point of view, suppliers for the importers are the exporters. JMC would like CBP to confirm that the name and address of the exporter could be acceptable as name and address of supplier to CBP.

Flexibility

The interim final rule allow for filing the data best available at the time of 24 hours prior to the loading and updating by 24 hours prior to the arrival at U.S. port. JMC strongly requests CBP to keep this flexible treatment in the final rule.

Comment 5

- Large increase in compliance costs

JMC is concerned that the interim final rule could impose enormous compliance costs on exporters. The exporters need to make substantial changes to their supply chain operations, and re-build their system in order to achieve compliance with the rule. The business process

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would be much more complex than before.

The following factors are considered to increase the costs:

- An increase in the cost of holding cargo due to the delays in the supply chain
- An increase in the cost of business management due to the complex business processes
- An increase in the labor cost to employ additional security staff
- Additional fees payable to the logistic service providers
- Expense involved in system development. etc.

Among others, the delay of supply chain is the most serious problem. Japanese exporters have been experiencing supply chain delays of 48 hours on average since the manifest 24-hour rule was introduced. We are concerned if the ISF could bring additional supply chain delays. In particular, compliance with the interim final rule (as written) would cause serious disruptions to those companies who employ just-in-time inventory management systems, and it is expected that exporters would bear a disproportionate share of the burden occasioned by such delays or disruptions.

JMC cannot now know exactly how long the supply chain delays would be as well as how much the total costs would be (including the opportunity costs caused by the delay) because only a small number of companies have achieved full compliance with the ISF to date. Nevertheless it is expected that the increase in compliance costs is expected to be enormous as a consequence of the ISF.

We respectfully request that CBP considers these circumstances in enactment of the final rule.

Comment 6

- Exemption of C-TPAT Participants from the requirements of the Importer Security Filing

CBP should exempt the certified C-TPAT participants from the requirements of the Importer security filing. The C-TPAT participating companies have made substantial efforts to enhance supply chain security, and CBP has validated that each C-TPAT participant has met the security criteria. Nevertheless, the proposed rule of the Importer Security Filing will impose the requirements equally not only on importers who have not participated in the C-TPAT program but also on the C-TPAT participants, which means that the C-TPAT participants will receive the same treatment by CBP as companies that make no such effort.

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Affiliated companies of many JMC members in the U.S. have already participated in the C-TPAT program. In a company in which its U.S. affiliated company is a C-TPAT participant, not only must the parent company in Japan but also other affiliated companies in Asia or other regions must conduct internal security management programs in accordance with the C-TPAT criteria, and must undergo C-TPAT validation by the supply chain security specialists of CBP. For the reasons above, JMC believes that C-TPAT participants should be exempt from the requirements of the Importer security filing.

Thank you for your consideration of our comments.

Regards,

A handwritten signature in black ink, appearing to read 'M. Fukumoto', with a large, sweeping flourish extending to the right.

Masanori Fukumoto

Chairman

Committee on Facilitation of Global Operation and e-Trade

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