

Japan Machinery Center for Trade and Investment

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August 22, 2003

Bureau of Customs and Border Protection
Office of Regulations and Rulings
Attention: Regulations Branch
1300 Pennsylvania Avenue, N.W.
Washington, DC 20229

Re: Comment on Notice of Proposed Rulemaking, Federal Register Vol. 68, No. 141, July 23, 2003, Amendment of 19 CFR Parts 4, 103, 113, 122, 123 and 192 (Required Advance Electronic Presentation of Cargo Information)

The Japan Machinery Center for Trade and Investment ("JMC") hereby submits comments on the Proposed Rulemaking issued by the Bureau of Customs and Border Protection ("CBP"), Federal Register Vol. 68, No. 141, July 23, 2003, Amendment of 19 CFR Parts 4, 103, 113, 122, 123 and 192 to require "Advance Electronic Presentation of Cargo Information."

JMC is an association of 310 firms that manufacture and export machinery products worldwide. JMC's membership includes most major Japanese exporters of electronics and machinery goods to the United States. JMC was established in 1952 under Japan's Export and Import Transactions Law to represent the interests of Japanese machinery exporters. JMC has always followed with great interest developments involving CBP. JMC generally supports CBP's actions and helps to publicize those actions, as well as CBP's proposals, in Japan.

JMC understands that importance of strengthening security relating to international cargo. To that end, JMC has translated into Japanese many documents regarding the various security programs, including the 24-hour rule, announced by U.S. Customs and CBP since last year. JMC also has tried to assist Japanese exporters understand the requirements of the U.S. security programs. However, at the same time, JMC remains concerned about the possibility that the security programs will place excessive burdens on companies involved in international commerce and will create disruptions in the efficiency of international

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commerce. Indeed, the parameters set forth in the statute¹, as summarized in the Federal Register notice for the Proposed Rule recognize the need for “Balancing the likely impact on the flow of commerce with the impact on cargo safety and security in determining the timing for transmittal of required information.”² From the perspective that such a balance is necessary, JMC strongly requests changes to several aspects of the Proposed Rule as discussed in detail below. We thank CBP in advance for taking these comments into account before issuing any final regulation.

1. The Timeframe for Advance Electronic Presentation of Inbound Vessel Cargo Information Should Be Based on a Period Prior to the Time of Arrival, Not a Period Prior to the Time of Shipment.

The Proposed Rule establishes a timeframe for advance presentation of cargo information for cargo imported by air, truck, and rail based on a period before the arrival of the cargo in the United States. However, the Proposed Rule requires presentation of cargo information 24 hours prior to the loading of cargo onto ocean vessels at the foreign port, i.e., presentation of cargo information, prior to departure of the ocean vessels. Because CBP allows the timeframe for advance presentation of inbound cargo information for air, truck, and rail cargo to be based on the time of arrival, JMC does not understand why pre-shipment presentation of cargo information is required only for ocean cargo, which has much longer lead times than, for example, air cargo.

Since U.S. Customs announced the Proposed Rule regarding “Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States” in August 2002³, JMC has taken the position that the time frame for the advance presentation of cargo information should not be based on a time prior to departure, but rather should be based on a time prior to arrival. JMC’s position is based on the significant burdens imposed on shippers (exporters) and carriers due to the pre-departure presentation requirement. Since the requirement of advance presentation of cargo manifest information 24-hour before laden at foreign ports took effect on December 1, 2002, Japanese exporters have faced significant burdens, including 1) a 48 to 72 hour prior to departure container yard (CY) cut off time so that ocean carriers can in turn meet the 24-hour prior to loading cargo presentation requirement and 2) an additional U.S. \$25

¹ Section 343(a) of the Trade Act of 2002 (Public Law 107-210, 116 Stat. 933, enacted on August 6, 2002)

² Federal Register Vol. 68, No. 141, July 23, 2003, at 43578, right column – 43579 left column

³ Federal Register/Vol.67, No. 153/Thursday, August 8, 2002/Proposed Rule/51519-51524 “Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States.”

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fee per bill of lading charged to cover the administrative costs of the pre-departure presentation requirement born by the carriers.

Unlike prior to arrival presentation of cargo information, the prior to departure presentation impose an additional burden: In order to reduce lead times, in principle, exporters must prepare complete and perfect information so as not to require any revisions prior to the time of loading cargo at foreign ports. For this reason, the 24-hour rule makes it necessary for exporters to maintain a data preparation time longer than that set under the rule itself and thereby increases the lead times necessary for shipment and increases the costs of shipping goods to the United States. However, if CBP based the deadline of advance presentation of cargo information on the time of arrival, there would be no need to artificially increase lead times prior to shipment and it would be possible to prepare complete and accurate manifest data prior to the deadline for the cargo manifest declarations.

If it is possible for air, truck, and rail cargo to fulfill the security requirements based on the time of arrival, JMC believes that it is similarly possible to apply the requirement of advance presentation of cargo information based on the time of arrival for ocean cargo as well. Therefore, JMC requests that the timeframe for advance electronic presentation of inbound cargo information for ocean vessels should be based on a time prior to arrival.

2. CBP Should Permit “Buyers Consolidation”

CBP has issued a ruling that announced that CBP will not permit multiple shippers or multiple consignees to be consolidated into a single bill of lading⁴. This ruling has ended the “Buyers Consolidation” import method. Under this ruling, each shipper and each consignees must now obtain separate bills of lading, regardless of the size of the respective shippers’ shipment. The ruling has increased the shipping and administrative costs of shippers and consignees and lowered the cost efficiency of international trade. Because “Buyers Consolidation” was a widely-used shipping method, the demise of this shipping method will be a negative effect on U.S. importers and U.S. consumers who must now bear the increased costs of separate bills of lading. Therefore, JMC requests that CBP once again permit “Buyers Consolidation” and allow multiple shippers or multiple consignees to be consolidated into a single bill of lading.

3. CBP Should Keep Its Promise to C-TPAT Participants

In the C-TPAT Fact Sheet, CBP promised that it would grant to C-TPAT participants no fewer than five benefits (*i.e.*, 1) a reduced number of inspections and reduced border times, 2) an assigned account manager, 3) access to the C-TPAT membership list, 4)

⁴ Question 38 of Frequently Asked Questions on the 24-Hour Rule(Revised 7/30/03) at page 33-35, and Customs Ruling HQ 11594, July 8,2003.

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eligibility for account-based processes, and 5) an emphasis on self-policing, not Customs verifications)⁵. However, CBP has not granted these promised benefits.⁶ At present, C-TPAT participants, which have volunteered to make efforts to strengthen supply chain security and have accepted the commensurate increased administrative and financial burden of doing so, receive the same treatment by CBP as companies that make no such effort. C-TPAT participants as good citizens, should be treated as such.

In CBP's response to comments on the Proposed Rule, CBP announced that it did not agree with the suggestion that C-TPAT participants and related parties should be excluded from the advance cargo information requirement or should be subject to a reduced time frame within which the advance cargo information must be transmitted.⁷ JMC believes that, in addition to the benefits already promised by CBP discussed above, CBP should reconsider this position and relax the time frame for the transmission of cargo information for C-TPAT participants.

Companies that have implemented the C-TPAT Security Recommendation and enacted internal company security programs bear significant additional burdens. Several U.S. affiliated companies of the JMC members already are C-TPAT participants and many more U.S. affiliated companies of the JMC members are making the necessary preparations to participate in C-TPAT as well. In a company group in which its US affiliated company is a C-TPAT participant, not only must the parent company in Japan but also other affiliated companies located in Asia or other regions must conduct internal security management programs in accordance with the C-TPAT security recommendations by CBP. JMC believes that CBP should fulfill its promise to provide benefits reflecting the efforts made by companies to implement the C-TPAT program. The C-TPAT participating companies have worked hard to improve security and have been recognized as being "low risk" companies. The JMC members whose affiliated companies in the U.S. are C-TPAT participants are happy to work towards improving border security in cooperation with CBP but still would appreciate receiving the benefits promised by CBP.

If CBP does not accept JMC's requests discussed in Section 1 and 2 above, JMC requests that CBP considers implementation of the following two items:

⁵ "C-TPAT fact sheet and Frequently asked Questions"

http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/fact_sheet.xml

⁶ JMC notes that CBP announced that it would terminate benefits to C-TPAT participants that failed to meet C-TPAT requirements. Fact Sheet at Frequently Asked Questions, Question 3 ("If a company fails to uphold its C-TPAT commitments, Customs would take action to suspend benefits or cancel participation."). However, CBP, as an initial matter, has apparently not granted any benefits, regardless of a company's compliance with its C-TPAT's commitments.

⁷ Federal Register Vol. 68, No. 141, July 23, 2003, at 43579, middle column

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- Recognition of advance cargo information declarations based on the time that the cargo arrives in the United States for C-TPAT participants.
- Recognition of "Buyers Consolidation" for C-TPAT participants.

We thank you again for your kind consideration of these comments.

Sincerely yours,

A handwritten signature in black ink, consisting of three distinct characters: '森' (Morimoto), '本' (Morimoto), and '修' (Morimoto).

Osamu Morimoto
Executive Managing Director
Japan Machinery Center for Trade and
Investment