

**Comments on the Proposed Rule of Cargo Information
(19 CFR Part 4, 103, 113, 122, 123 and 192)
by the GOVERNMENT OF JAPAN**

The Government of Japan hereby presents its comments on the proposed rule of regulations as regards requirement of advance electronic presentation of cargo information announced by the Bureau of Customs and Border Protection (CBP) on July 23, 2003 [FR Doc. 03-18558].

The Governments of Japan recognizes the importance of, and supports in principle, the initiatives launched by the United States to promote transport security as a part of counter-terrorism measures. In fact, the Customs and Tariff Bureau of the Ministry of Finance of Japan has joined the Container Security Initiative and has started its pilot program. At the same time, however, the Government of Japan believes that transport security initiatives should be minimum to achieve that purpose and that the balance between securing transport security and smooth international trade should be maintained. The Government of Japan and the U.S. Government have been discussing counter-terrorism measures in maritime and other sectors at a variety of fora such as the Regulatory Reform and Competition Policy Initiative, with a view to promoting two-way trade and investment and personal exchanges between the two countries, and have reached more profound mutual understandings on the importance of smooth trade. The Government of Japan hopes that the U.S. Government takes as realistic measures as possible considering these developments.

The Government of Japan understands that requirement of advance electronic presentation of cargo information by the proposed regulations aims at promoting transport security. The Government of Japan is, however, deeply concerned that the proposed rule will impose excessive burden upon the interested companies, though it is improved in comparison to the proposal made in January 2003. If measures under the proposed rule hinder legitimate trade, they will have negative influences on the development of the world economy as a whole. As the proposed regulations include provisions concerning advance presentation of air cargo information, the U.S. Government should consider that swiftness is important especially in international air cargo transportation.

Consequently, the Government of Japan requests that the U.S. Government seriously consider the following points:

- (1) Under the proposed rule, air cargo carriers for the U.S. should present cargo information four hours prior to arrival at U.S. airports. Those carriers need, however, a certain length of time after departure to prepare for the presentation of cargo information. Especially, if a flight time is six to seven hours like that from Japan to Anchorage, there remains very little time for the air carriers for preparation.

The Government of Japan therefore requests that the deadline of presenting air cargo information be set as closer as possible to the moment of arrival at U.S. airports in order for air carriers to be secured sufficient time to prepare for presentation of cargo information.

- (2) There is no provision in the proposed rule on the treatment of companies joining the Customs-Trade Partnership Against Terrorism (C-TPAT), in which many companies involved in Japan-U.S. trades participate as well. When the U.S. Customs (present CBP) announced C-TPAT, they committed that C-TPAT participants could receive benefits, such as swifter customs clearance and a reduced number of inspections. C-TPAT participants, however, have not in fact received such benefits due to the reinforcement of transport security including the 24-hour rules. The Government of Japan therefore requests that such promised merits be realized along with the implementation of the proposed rule, or that the CBP establish an alliance program in which low-risk traders who meet legitimate guidelines can enjoy benefits similar to those committed under C-TPAT.
- (3) Under the proposed rule, if air carriers and air freight forwarders fail to present precise cargo information, penalties such as fining, withdrawal of landing rights and refusal of unloading may be imposed upon them. Air carriers and air freight forwarders cannot, however, guarantee the correctness of cargo information provided by shippers. The Government of Japan therefore requests that air carriers and air freight forwarders be exempted from penalties when they are not responsible for the incorrectness of cargo information.
- (4) While the regulations concerning air cargo information will be implemented after 90 days from the date of publication of the final rule, the related companies need a certain length of time to appropriately prepare for the presentation of cargo information. The Government of Japan therefore requests the CBP postpone the implementation or set longer moratorium.
- (5) The Government of Japan requests that the CBP publicize a detailed instruction of the new regulations on its website upon their enactment so that the related companies can clearly understand the regulations.
- (6) As the CBP will deal with a massive amount of cargo information after the implementation of the regulations, the Government of Japan requests that the CBP establish an organizational setup to solve possible system failures promptly.
- (7) Cargoes carried via U.S. ports and airports to another country are not unloaded at nor imported to the U.S., and therefore should be exempted from the new regulations.

In addition, the Government of Japan would like to have confirmation from and make requests to the CBP as follows:

- (8) Please clarify the status of Automated Export System (AES) Option 4 under the new measures, which allows exporters using AES to file their cargo information within ten days after the date of export. The Government of Japan requests that AES Option 4 remain effective under the new regulations and

that its scope of application be defined as soon as possible.

- (9) The CBP is developing an electronic customs-clearance system called the Automated Commercial Environment (ACE), in which all electronically-filed cargo information will be integrated upon its scheduled operation in 2006. Please clarify the assumed status of the new regulations under ACE.

As the CBP states that the 24-hour rule will be reviewed when ACE starts to work*, the Government of Japan request that the new regulations also be reconsidered upon the beginning of ACE. The Government of Japan also requests that when electronic distribution comes into practical use by using information technology and other advanced devices such as IC tags, the CBP utilize advanced technologies appropriately and adequately with a view to reviewing the relevant regulations.

- (10) Please clarify the status of air cargo that flies for less than four hours under the new measures, whose information will consequently not be finalized four hours prior to arrival, such as in the case of flights between Japan and Guam or Saipan.

Finally, the Government of Japan requests that the CBP make final rule with due consideration of the filed comments to prevent the regulations from affecting negatively on Japan-U.S. trades and global supply chain. Whereas the CBP intends to promulgate the final rule in October, the Government of Japan requests that the CBP consider postponing promulgation for a certain period of time so that it can fully reflect the public comments in the final rule.

* The FAQ concerning the incumbent 24-hour rule publicized by the CBP states "As the various releases of ACE are completed and the ability to collect data and information is enhanced, CBP will re-evaluate the rule."