

JOINT INDUSTRY GROUP

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September 9, 2002

U.S. Customs Service
Office of Regulations & Rulings
Attention: Regulations Branch
1300 Pennsylvania Ave., NW
Washington, DC 20229

The Joint Industry Group (JIG) thanks the United States Customs Service for the opportunity to comment on the notice that appeared in the August 8, 2002 Federal Register (67 FR 153) for a proposed rule for presentation of Vessel Cargo Declaration to Customs before cargo is laden aboard vessel at foreign port for transport to the United States.

JIG is a coalition with more than 160 members including Fortune 500 companies, trade associations, professionals and businesses actively involved in international trade. We examine and reflect the concerns of the business community relative to current and proposed international trade-related policies, actions, legislation, and regulations, and undertake to improve them through dialogue with Congress, the Treasury Department, the U.S. Customs Service, and other government agencies. JIG membership represents more than \$350 billion in trade.

The JIG appreciates the efforts of the Customs Service to improve trade processes and will continue to seek opportunities to contribute to Custom's efforts to strengthen security in the supply chain. While we agree that Customs should be supplied with more detailed information at a point in time prior to that now required, mandating its presentation on public manifests, rather than through transmission directly to Customs, creates a greater opportunity for terrorists, thieves and others to target specific containers for their illegal purposes. The proposed rule will also seriously impact supply chain processes for carriers and shippers by slowing the timely departure of goods bound for U.S. markets.

Impact on the Trade

The impact and ultimate "burden" of the proposed process on the parties involved is not currently known. The trade has built supply chains around a system of just-in-time delivery that requires timely loading of vessels and on-time departures from foreign ports. Oftentimes, the documents that compose a manifest are not readily available until the loading of cargo. While the rule clearly requires the trade to provide data 24 hours prior to loading of cargo at the foreign port, the rule does not provide for a satisfactory timeline for Custom's subsequent authorization and approval for loading of containers. Unapproved shipments will delay departure of vessels, increasing the opportunity for terrorists, smugglers and others to introduce un-manifested articles on board while vessels are docked. Rather than adopting regulations which will result in vessels being delayed from sailing, Customs should propose requirements which will result in vessels spending as little time as possible being docked, which is the time when security concerns are the greatest.

Delayed departure would also require increased costs for staff, storage and equipment allocation, and the cost companies will incur for unnecessarily postponing the delivery of goods to market. Additional equipment will need to be positioned at the vendors and increased time costs to notify shippers of equipment shortages. These delays would most impact peak seasons and quarter end cycles. Exact costs involved for startup operations, maintenance, and purchase of services to provide the information is not known. However, the full context of what will be required to track inventory for shippers and carriers, etc. is known to be an extremely expensive proposition that will substantially and needlessly decrease profitability.

Many companies have limited control to guarantee that manifest information will be transmitted via the electronic data interface (EDI) provided for FMC licensed and bonded forwarders and NVOCC's. In many cases, manifest information is submitted manually, providing little or no chance for getting approval within the 24 hour window, requiring shippers to incur additional costs for storage or to move cargo via more expensive routes. Vendors would also be required to have additional inventory before title is passed to customer, leading to higher cost of goods.

Continued Support from the Trade

The JIG fully supports the dual mission of the U.S. Customs Service to facilitate safety and efficiency in the supply chain. The trade will continue to provide information to Customs as long as it is pertinent and appropriate for the purposes of selectively identifying those shipments that will receive greater scrutiny, including inspections and searches. While manifest information is currently made publicly available under code section 1431, the trade continues to be concerned that advanced knowledge regarding shipments could affect competitive advantages. More importantly, the trade is concerned that providing advance information regarding highly sensitive shipments will adversely affect national security. Full support should be given to the development of automated tools, such as the Automated Commercial Environment (ACE), that allow for secure and efficient collection of information for risk targeting.

Section 343 of the Trade Act of 2002 sets forth clear parameters for Customs operation, specifically, the procedures for reporting information to Customs. However, while the proposed rule was issued after section 343 was enacted, it appears to not consider the parameters dictated by Congress. The JIG encourages Customs to more fully support the structure laid out in section 343 when developing rules for collecting trade manifest information. The JIG also encourages Customs to continue to investigate the feasibility of alternatives to the proposed rule with the cooperation of the trade. Commissioner Bonner has consistently insured the trade that a balance will be struck between trade facilitation and cargo enforcements, yet the proposed rule seems inconsistent with his statements that legitimate shipments will not be disadvantaged.

Affected Shipments

While the proposed regulations seem to be targeted primarily toward containerized cargo, no distinction is made between containerized cargo and other types of cargo, including bulk carriers, break-bulk cargo and vessels transporting liquid cargo in tanks. It is unclear how the proposed rule will be effectively

administered among all types of imports and exports transmitted by ocean vessels. For example, compliance for liquid petroleum products on tank vessels, as well as many other types of fungible bulk commodities, is virtually impossible since the cargo is already on board at the time of sale.

The JIG recommends that Customs engage the trade to ensure more practical development of the proposed rule to target the application to various maritime activities. The trade should also be consulted prior to proposing any similar rules for cargo shipped via other modes of transportation.

Unnecessary Penalties

Language included in the proposed rule also describes unnecessary penalties that would be imposed on compliant shipments that are transported on vessels that also carry “non-compliant” cargo. While the proposed rule does allow Customs to decline to issue a permit to unlade the "specific cargo" or impose civil fines, the rule places an unreasonable burden on compliant shippers and essentially eliminates the ability for U.S. companies to maintain production and manufacturing cycles. Delayed unloading would also significantly impact local drayage, and warehouse operations since most of the warehouses are staffed to support normal weekly flow.

Again, we appreciate the opportunity to comment and look forward to continuing the work toward providing safety and security in the supply chain.

Regards,

A handwritten signature in black ink that reads "Ron Schoof". The signature is written in a cursive, flowing style with a large, prominent 'S' at the end.

Ron Schoof
Chairman
Joint Industry Group