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BALANCING SECURITY AND COMMERCE IN MARITIME TRANSPORT:
A U.S. SHIPPERS PERSPECTIVE

Paper submitted by the National Industrial Transportation League (NITL)

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1. Since the terrorist attacks of September 11, the U.S. domestic and international transportation system has been the subject of unprecedented scrutiny. While much of the public’s attention has focused on passenger movements, a great deal of time and resources are being given to how cargo security can be improved. This effort is requiring government officials and industry representatives to monitor and develop new security functions and government approaches on a dizzying array of initiatives that are taking place in both the executive and legislative branches of government.

2. One important principle in understanding the need for security changes stems from the revolution brought about by containerisation. The very basics that have made this system successful – competitiveness, efficiency, open access, versatility and uniformity – are the very things that also make containerised shipping vulnerable from a security standpoint. Making the system safer will require changes and they will have to be practised, observed and enforced by everyone in the transportation supply-chain.

3. Clearly, the lead agency on maritime security in the United States has been the U.S. Customs Service. However, in the days immediately following September 11, the U.S. Coast Guard issued a rule extending the time-frame from 24 to 96 hours that cargo manifest and crew information must be received on ships bound for the United States. Increasing this time frame is part of the U.S. government’s overall policy of “pushing the border back.” This new requirement applies to information that must be received prior to the vessel’s first call at a U.S. port.

4. Shippers were clearly the focus of Customs on April 17 of this year when the agency announced its “known customer” program called the Customs-Trade Partnership Against Terrorism Program, which is known by its initials C-TPAT. This new government initiative is meant to expedite the processing of cargo at the U.S. border while maintaining security over the maritime transportation system. Its concept is simple. If authorities are familiar with the parties, their operations, practices, use of suppliers, service providers, etc. then the cargo they ship – will be considered a “low risk” and it may proceed without undue delay.

5. To become a member of C-TPAT, an applicant must enter into an agreement with the agency under which it executes a “memorandum of understanding.” The MOU sets forth specific requirements that will be adhered to by the applicant. All of these requirements may be found on the Customs website, www.customs.gov. To date over 400 shippers are members of the program and it has recently been expanded to include carriers and brokers.

6. Clearly the C-TPAT is a viable program that should facilitate cargo flows. It also has the advantage of increasing the visibility of shipments to the appropriate parties so that anomalies may be easily detected.

7. Additionally, Customs has also embarked on a program known as the “Container Security Initiative (CSI).” This program was originally designed to cover the 10 largest foreign ports that export cargoes (by volume) to the United States. The CSI is also part of the Administration’s policy of “pushing
the border back.” Under this program, U.S. Customs enters into a co-operative agreement with foreign ports on procedures for profiling and inspecting cargoes. It also gives Customs officials access to foreign facilities for the purpose of detecting and examining terrorist threats that may be contained in shipments destined for the United States.

8. The League believes that a fair balance may be achieved where the system can be made less vulnerable to terrorism while delays can be kept to a minimum. While this may take some time, because of all of the programs that are underway or soon will be, the possibility that the marine transportation system will be used as a tool for terrorists should be reduced.

9. On October 31, U.S. Customs published a final rule which requires an ocean carrier or qualified non-vessel operating common carrier (NVOCC) to electronically transmit to the agency required cargo manifest information 24 or more hours before cargo is loaded at a foreign port onto a ship destined for the United States.

10. Current rules provide that vessels bound for the United States must have a cargo manifest and this must be provided to Customs before the agency may issue a permit for the cargo to be unloaded.

11. The rationale for the new 24-hour rule is to enable overseas Customs personnel to identify high-risk containers, while ensuring prompt processing of lower-risk containers. This program is also in keeping with Customs’ new Container Security Initiative (CSI).

12. While ocean carriers have traditionally been the only party responsible for providing cargo manifest information directly to Customs, the proposed rule would permit qualified NVOCCs (licensed by the Federal Maritime Commission and in possession of an International Carrier Bond) to electronically transmit required cargo manifest information directly to Customs through the Automated Manifest System. An alternative for this procedure would be for the NVOCC to provide this information to the ocean carrier who in turn would present it to Customs. The declaration must contain 15 elements among which are:

   1. The foreign port of departure.

   2. The date of scheduled arrival in the first U.S. port in Customs territory.

   3. A precise description, or the Harmonised Tariff Schedule (HTS – numbers under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper’s declared description and weight of the cargo. Generic descriptions, specifically such as “FAK” (freight of all kinds), “general cargo”, and “STC” (said to contain) are not acceptable.

   4. The shipper's name and address, or an identification number, from all bills of lading.

   5. The consignee's name and address, or the owner's or owners' representative's name and address, or an identification number, from all bills of lading.

13. Compliance with the final rule will definitely change how the transportation industry moves freight and that will require more planning, different logistics strategies and greater co-operation with other sectors of the industry. Not surprisingly many of the comments in reaction to the rule have centred on its negative implications – port and terminal congestion, longer transit times and service failures. However, the alternative results in the event of a terrorist attack have even graver consequences. As was the case in the U.S. air system which faced a three-day shutdown after September 11, 2001, a terrorist event involving ocean freight transportation, according to many experts, might result in an operational shutdown for several months. Shuting down international maritime transportation commerce for even a short period of
time would have devastating impacts on the world’s economy the results of which has never before been experienced.

14. The effective date of the final rule is December 2, 2002. However, after reviewing comments submitted in response to the proposed rule published earlier this year, Customs has said while the rule must become effective as soon as possible due to national security needs, it will not assess penalties for non-fraudulent violations or institute other enforcement actions for 60 days after the effective date.

15. Customs has also confirmed that the 24-hour rule would not apply to bulk cargo and that breakbulk cargo may be exempted on a case-by-case basis. Companies that are exempted from the 24-hour rule must submit their cargo declaration form to the agency 24 hours prior to arrival in the United States. Bulk cargo is defined as homogeneous cargo stowed in bulk. The League in its 9 September comments, available on its site http://www.nitl.org/leg.htm, strongly urged Customs to exempt bulk cargoes.

16. The final rule also permits NVOCCs that are registered with the Federal Maritime Commission (FMC) to become bonded with Customs. Such entities will be permitted to be included in the electronic filing program. Shippers’ associations may not participate since they are associations of shippers and are not currently regulated under U.S. law and are not licensed or registered with the FMC.

17. Two key issues were raised by NVOCCs during the comment period regarding the confidentiality of certain manifest information. The first concerns the disclosure of manifest information that could provide a business with a competitive advantage, and the second relates to the security of cargo. Customs said it intends to address these concerns in the near future by issuing a Notice of Proposed Rulemaking. An immediate available option, Customs said, is for an NVOCC to request appropriate importers, exporters, and consignees in the United States to file certifications on their behalf, thus protecting pertinent information from disclosure.

18. As to the premature release of advance cargo information, Customs said it will not release information from cargo declarations until the complete manifest is filed with the agency.

19. Another issue raised by the League and other commenters concerned Customs granting permits to unload cargo in U.S. ports. The concern was that an entire vessel could be denied permission to unload in circumstances where only a portion of the cargo was non-compliant with the 24-hour advance notification rule.

20. Customs has stated that when it has identified a portion of arriving cargo which was not laden in accordance with the final rule’s requirements, it has the authority to process that cargo differently. It would allow for the unloading of that portion of cargo that complied with the final rule.

21. As for seals on containers, the serial number of the last person/company to load the container is required. Participants of C-TPAT must affix seals to all loaded containers.

22. Another concern relates to whether the absence of a notification to carriers by Customs would serve as an authorisation for loading. Customs has said it agrees in principle with the notion of providing electronic confirmation messages to carriers, but that necessary programming to do this cannot be accomplished before the rule is implemented. The agency intends to determine whether the automated manifest system program will make this feasible.
23. The matter of requiring that cargo manifest information be submitted to Customs 24 hours before loading the cargo aboard the vessel at a foreign port was raised by several commenting parties as running counter to “just in time” practices. In its response, Customs states that the new rule does not mean that cargo be ready for inspection or that cargo be at the dock, however, it does mean that vessel carriers will have to change the current practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their loading.

24. As for participants in the C-TPAT program, while Customs will not exclude those participants from the advance reporting requirements, it will take their participation into account during the targeting process.

25. Additionally, Congress, in early August 2002, approved the Trade Authorisation Act of 2002. This new law provides for security requirements on U.S. imports and exports, including new documentation and reporting rules. While the new law would permit the President to negotiate trade agreements, the measure will also affect ocean cargo movements.

26. First, there is a provision affecting export cargoes. Under the new law, no shipper of cargo (including transportation intermediaries) may tender, or cause to be tendered, cargo that is not properly documented. The shipper (or its agent) must submit a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator, but, under no circumstances, later than 24 hours prior to departure of the vessel. A complete set of shipping documents shall include a shipper’s export declaration transmitted electronically in the U.S. Customs Service’s Automated Export System, the complete bill of lading, and the master or equivalent shipping instructions, including the Internal Transaction Number (ITN), and for shipments for which a shipper’s export declaration is not required, a shipper’s export declaration exemption statement.

27. If these requirements are not met, the new law provides significant penalties, including seizure of undocumented cargo, civil penalties in the amount of the value of the cargo, or the actual cost of the transportation, whichever is greater.

28. As for imported cargo (affecting air, maritime and surface modes), the Act requires the Secretary of Treasury within one year to promulgate regulations providing for the electronic transmission of shipping data on cargo to the Customs Service. Specifically, through a rulemaking, the Secretary shall solicit comments from a broad range of parties likely to be affected by the regulations, including, “importers, exporters, carriers, customs brokers and freight forwarders.”

29. The new measure also directs the Secretary of the Treasury to establish a Joint Task Force to evaluate and certify secure systems of transportation. The task force shall, no later than one year after the date of the enactment of the Act:

1. Establish standards and a process for screening and evaluating cargo prior to import into or export from the United States.

2. Establish standards and a process for a system of security cargo and monitoring it while in transit.

3. Establish standards and a process for allowing the U.S. government to ensure and validate compliance with the program elements.

4. Include any other elements that the task force deems necessary to insure the security and integrity of international intermodal transport movements.
30. This is the first major law approved in the U. S. implementing new security requirements on the movement of freight.

31. Another major step in co-ordinating the United States response for monitoring and executing security is the Bush Administration’s plan to consolidate a large number of agencies currently under several executive branch departments into a single cabinet level Department of Homeland Security (DHS).

32. The DHS would be organised into five components: border and transportation security; emergency preparedness; chemical, biological, radiological and nuclear countermeasures; informational analysis and infrastructure protection; and Secret Service.

33. Of particular focus to transportation professionals will be the component dealing with border and transportation security. This section of the new department will bring major border and transportation operations under one roof.

34. The plan provides for the new agency to absorb the U.S. Customs Service from the Department of the Treasury as well as the U.S. Coast Guard and the newly created Transportation Security Administration from the Department of Transportation.

35. The legislation is currently pending before the U.S. Congress which must approve the proposal.

36. Suffice it to say, shippers believe these changes are necessary and must go forward to ensure that the international freight transportation system is protected from acts of terrorism.

37. In considering all these measures, shippers must keep in mind that the consequences that would result from terrorist activities would include interrupted vessel service, port closures and indefinite delays to cargo. Government and industry leaders in co-operation with foreign governments must work together in fashioning procedures that will be effective without impeding commerce. In developing new security safeguards, policy makers must be careful not to unnecessarily compromise or undermine the efficiency and reliability of the transportation industry. Every effort must be made to keep the international ocean transportation system protected and in a position to serve world trade.