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## Information Paper 40/2009

### Update on Major Regulation Affecting Cargo Shipments

#### Background

- Members may be aware that within the EU and US, increasingly stringent regulation is being progressively introduced on screening and audit trails for both air and sea cargoes:
  - A number of EU states have security worries that cargo destined for specific EU members has to be accepted if 'cleared' by another member state as first port of entry.
  - Within the US, legislation has been enacted to move quickly to a position where all inbound cargo will be screened prior to entry and places requirements on shippers to provide key data sets on consignments 24 hrs before shipping. Containers will also have to have tamper-proof seals and procedures will be required to trace individual packets should these go missing after screening.
  - Separately, the EC is running a trial to try and establish technology-based solutions to enhance container security, consignment preparation and handling audit trails, for imports into the EU from South-East Asia. Some ICHCA TT Club members and other industry players are participating in these.
- Of these, the second is, of course, causing industry concern that on-costs of any rigorous compliance will be substantial (they are already impacting) and that any move to 100% screening of containers, e.g. by X-ray backscatter systems is impractical due to issues of scale.



- There is also political concern that stricter, but internationally unstandardised, regimes will lead to accusations of unfair trade practices or divert business elsewhere (e.g. air cargo away from US ports of entry to Canada for overland shipping cross-border). Moreover, the new US regime appears not to want to impose unnecessary burdens on commerce at a time of severe economic stress.

Although it has been reported that EU and US policy heads have not reached agreement on standards, but will instead recognise each others compliance regimes (i.e. US: C-TPAT / EU: AEO Programme), it is looking highly probable that both will introduce tighter security regulation throughout supply and distribution chains; work is already progressing to do just this, and focused on technology solutions to enhance security and facilitate compliance.

## Major Programme Status

### Air Cargo

- Although the US TSA believes that it will be impossible to attain 100% screening by 2010, there remains no let up in political pressure:
  - US House of Representatives Homeland Security Committee chairman Bennie Thompson won't take no for answer after experts told him that 100 % of air freight screening on domestic passenger flights is next to impossible, reports Washington-based Air Cargo World. *"Everyone tells us it can't be done, but they are going to have to tell us why. There is pushback, but I'm committed to 100 per cent,"* the Democratic Minnesota congressman told a conference of the American Association of Airport Executives and the Airports Council International-North America.
- The Transportation Security Administration has created the Certified Cargo Screening Program (CCSP) to enable the air cargo industry to achieve the 100% screening mandate of all cargo transported on a passenger aircraft by August 3, 2010. An interim requirement to screen 50% of such cargo was reached on February 2, 2009:
  - However, the Agency has admitted that it cannot verify that 50 per cent screening on all domestic air cargo on passenger aircraft is happening



because it lacks needed data<sup>1</sup>.

- The CCSP authorises facilities to become certified cargo screening facilities (CCSF) once they have been vetted, validated, and TSA-certified to screen air cargo.
- The CCSP also requires that a CCSF apply stringent chain of custody methods to safeguard previously screened cargo as it travels through the air cargo supply chain prior to being transported on a passenger aircraft.
- Some EU regulators are also believed to be looking to extend non-repudiable audit trails back through to consignors, despatch and delivery agents, a problematic proposition given the complexity and diversity of the commercial businesses involved.

## Containers

- With the passage of the SAFE Port Act of 2006, and as part of a mandate by Congress to improve overall container security; the US Customs and Border Protection (CBP) is required to collect additional data elements necessary to perform Advance Target Screening (ATS) of ocean cargo and to identify high risk shipments for security based examinations.
- This new regulation requires the importer or his designated agent to supply 10 data elements<sup>2</sup> to be transmitted electronically to CBP no later than 24 hours prior to vessel loading at the designated foreign port of lading.
- CBP will not mandate full enforcement of the ISF data collection during a 12 month delayed enforcement period from January 26, 2009 to January 25, 2010 as long as importers are making a good faith effort and satisfactory progress towards compliance. CBP will also conduct a review to determine specific compliance difficulties that importers may face in complying with the rule.
- As with Air Cargo, some within the US political and security administration, still believe that 100% screening of containers by technologies such as backscatter

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<sup>1</sup> US General Accounting Office.

<sup>2</sup> Detail at: <http://www.kweusa.com/newsroom/IU/KWE%20Industry%20Update%20February%202009.pdf>



X-ray is the only way to ensure security, despite the impracticality and costs that would be involved.

## Way Ahead

- The growing opinion within the major Western trading blocs appears to be to work towards harmonised standards for screening and security but that the most cost-effective way to achieve enhanced security for borders and passengers alike will be through an improved 'intelligence-led' approach that enables targeted selection of freight for full screening and inspection after pattern analysis as one component of an overall enhancement.
- This demands novel (Business Insight) and interoperable IT at its heart to be successful. But consortia of solution providers have formed and are forming, to offer this to both governments and industry; there has been some substantial and effective lobbying of the former (in the US and EU) by consortia to some effect and major Transport Integrators and Port Authorities will become increasingly aware of proposed approaches during 2009.
- The most effective of the new IT programmes will be those that take account of industry requirements to align with efficiency programmes such as IATA/WCO 'paperless cargo' and 'simplify the business' and that offer more than just enhanced security at net on-cost.
- Operational models vary from 'trusted 3<sup>rd</sup> party providers' to selling-in system upgrades to major TIs/Authorities.

## Impact

- Consequences for ICHCA members is that, even if strategic adoption of 100% screening remains problematic or unlikely in the near to medium term, the quest by Western regulators for enhanced security and robust audit trails throughout the supply and distribution chains will continue to harden and cannot be ignored or the potential will exist for disrupted trade or lost business. The trend will also extend to Indian and Asian regulators.
- The extent to which current US and other new regulation is actually *enforced* also remains to be seen, and industry still needs to push to see promised facilitated movement/economic benefit from current compliance schemes such



as Authorised Economic Operator realised in practice.

- ICHCA and others will also need to lobby to ensure that businesses are not unfairly disadvantaged by any new and imposed solutions.
- ICHCA should ask ISeP to consider revisiting developments on the issues raised above at its next meeting and determine whether further advice should be drafted to assist ICHCA's members.

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References:

Unless specifically cited, open source company and official documents and from recent participation in discussions with regulators and technology providers.