

the **NCBFAA**

National Customs Brokers & Forwarders Association of America, Inc.

Cargo Security White Paper

Who And What Is Suspect?

When focusing on the challenge of securing the supply chain the first questions to examine are who is suspect, and what poses a threat? The usual suspects must include: international travelers, resident aliens, even U.S. citizens, international cargo shipments to or from the U.S., mail and courier services. It would not be stretching the point to suggest that suspects and threats populate every corner of the world, and may be introduced at any point in the supply chain.

Motivating Factors

It is also instructive to consider what motivating factors might be behind a terrorist attempt. A list of these factors must include: hostile political or philosophical views, financial problems or greed, substance abuse problems, mental disorders, blackmail or extortion, copycat publicity seekers seizing targets of opportunity, even those duped into unwitting involvement in illegal operations.

Elements of Cargo Security

Logical steps in securing the supply chain will proceed as follows:

- Identify the risks
- Understand the risks (terrorist, hazmat, compliance, etc.)
- Isolate the risks
- Allocate resources to eliminate, neutralize, or reduce the risks
- Assign clear ownership for action plans
- Anticipate and act prior to the risk becoming a problem, e.g., examine shipments prior to exportation
- Implement systemic solutions to secure against recurring risks
- Create feedback loops, redundancies and audit regimes
- Benchmark processes and measure results
- Monitor and manage through objective reporting
- Analyze exception reports and develop best practices

Who Must Secure The Supply Chain?

Responsibility for supply chain security falls to all those in the public and private sector who profit from involvement in the supply chain as well as government agencies whose duties include intelligence gathering, systems and infrastructure design and maintenance, support functions, and cargo inspection and control tasks in particular. Some of these entities are: port authorities, terminal operators, stevedores, cargo handlers, inspectors, fumigators, gaugers, international carriers, **nvocc's**, equipment leasing companies, government officials, administrators, operatives, agents and employees, warehousemen, cartmen, draymen, domestic carriers, manufacturers, suppliers, resellers, shippers, (de)consolidators, **freight forwarders, ocean transportation intermediaries**, delivery agents, and **customs brokers**.



Why do it?

Securing the supply chain truly transcends all parochial considerations and self-interests. It is simply a matter of patriotic duty, inspired by our renewed sense of community in facing the horrors of September 11th and the duty of all Americans to support our country in the war against terrorism. As international trade professionals, this is our mission; we can do no less.

Challenges We Face

We will face many challenges in our mission. Safeguarding the supply chain can not be the only concern in securing the future freedom, prosperity and general welfare of our nation. There will be competing needs and priorities. Budgets and resources will not be unlimited. Yet, establishing new programs, providing the necessary training, conducting additional cargo examinations, and acquiring the high tech assets for use in this mission will not come cheap.

A critical requirement for success will be achieving a very high level of cooperation when bringing together the various sectors of the trade and government in our common efforts. Therefore it is important that we recognize potential impediments to achieving full cooperation. These are likely to involve perceptions relating to protection of turf, jobs, trade secrets, and business relationships. Perceived dichotomies as between: proprietary vs. security interests, self-interests vs. national interests and civil litigation vs. civic duty will need to be addressed.

Some weaknesses in supply chain security are easily identified and should be the subject of immediate attention. Some of the present vulnerabilities are found along our land borders where arrangements for exports can be made by unlicensed, unregulated and uninitiated parties, where lead time may be negligible, where high traffic volumes and congestion may provide vehicular camouflage and hostage taking opportunities, and where examinations may not be required.

If through our cooperation and efforts we do succeed in the first stage of this mission the inevitable result will be increasing cargo volumes in international trade and a concomitant growth in the cost of security. Even so, we must make a start without delay at improving security at the 361 ports to be secured. We are under time pressure; the enemy will not wait for us to make ready.

Which Government Agency Should Lead?

Having set forth the need to quickly develop and implement programs to enhance supply chain security, consideration must be given to the appropriate channels for delivery. Which government agency should lead the charge? The Transportation Security Agency (TSA) is too new, undeveloped and unequipped to handle border security. The FAA is limited to airfreight. INS & Border Patrol are focused on illegal aliens. The Coast Guard is primarily military and limited to the seafreight environment. The FDA, FWS, Dept of Agriculture, etc. are limited to specific classes of cargo. The U.S. Customs is staffed, equipped, funded and ready.

U.S. Customs Has Security Assets

U.S. Customs has a large experienced professional staff, enforcement experience, existing computer systems and funding for future programs. They already maintain high tech equipment for examining cargo and passengers, and have offices and staff at all ports of entry. Customs is experienced in handling international cargo, returning residents, foreign travelers and illegal aliens. A body of law, regulations and directives is already in place to bring order to the process. There is also a history of experience in the private sector for dealing with Customs. The Customs bar is populated by attorneys skilled at resolving legal issues that might arise.

Private Sector Resources Include

Customs brokers licensed by the U.S. Treasury, **ocean transportation intermediaries** (OTI's) licensed by the Federal Maritime Commission and approved **indirect air carriers** (IAC's) regulated by the Federal Aviation Administration add to a reservoir of experience with Customs for which there is no substitute. Other private sector entities experienced in dealing with Customs in plying their trades include: customs bonded cartmen, customs bonded warehouses, and customs bonded carriers.

Threats Posed By International Trade

In recent times the supply chain has developed into a highly complex and efficient network of producers, carriers, intermediaries, handlers, buyers, and facilities that have made expeditious and dependable transit a critical element of a highly competitive and market sensitive global economy. While the multiplicity of entities and diversity of relationships involved are essential to international commerce, it conversely complicates any scheme to tighten security. First order threats to which the supply chain may provide a means for penetrating our borders and defenses include nuclear, chemical or biological weapons or the capability for their production. Any proposal for enhancing supply chain security must also anticipate attempts to introduce terrorists in conveyances intended for transport of goods.

More traditional targets for security interdiction include illicit drugs that help fund terrorism and illegal exports from the United States of licensed materials and technology. Means to frustrate money laundering and shrink the terrorist footprint are also crucial elements in securing supply chain.

Knowledge Is Key

Much of what needs to be done is fairly obvious. Knowledge is key for discriminating as between differing levels of threat. Knowing all the players and their history will enable the most productive allocation of our security assets only when that information is organized and can be quickly accessed by responsible officials. Such knowledge can best be used in connection with relevant data reflecting the movement of goods through the channels of commerce. A composite picture for security screening can be compiled in a “chain of custody” data set for measurement against security indices at virtual checkpoints in the supply chain.

Allowing for multiple data inputs through web based portals from the very beginning of multistage, multiple party fabrication that often crosses national borders several times before reaching, or after leaving the U.S. will allow for highly sophisticated and advanced real time targeting. Possibly, an even more important benefit to be gained from a “chain of custody” perspective would be a high degree of confidence when eliminating low risk commerce from unnecessary security obstacles at critical stages in the life cycle of a good. For JIT end users this is a business imperative. For parties having less dependence on time sensitive delivery it will be necessary to create additional incentives, e.g., tax credits, fee reductions, public recognition, etc.

Ways to Reduce Risks

As demonstrated above, knowing the players will serve the parallel goals of this mission, interdicting the means for terrorism and facilitating the flow of legitimate commerce. This knowledge must arise from an accurate translation of each company’s internal security posture. A common element in these security programs will include employee screening and background checks, while for firms involved with the production material or freight handling it may also have fingerprinting requirements and personnel recognition devices for access to restricted or sensitive areas.

With development and real time use of known party databases in conjunction with “chain of custody” data streams it will be possible to make advance security assessments. Any program for enhancing supply chain security should provide for examination of “high risk” shipments prior to exportation. As good as the intelligence and screening might become for targeting examinations throughout the supply chain it would also be prudent to increase random examinations.

How Can Customs Stretch Its Resources?

No matter the extent to which security assets are augmented these will always be limited and the question of how Customs can stretch its resources should be examined. During the completion and amplification of all guidelines for the C-TPAT program, Customs should also work with the trade in defining and compiling profile data on “known” shippers, truckers, carriers, warehouses, importers, etc. Customs must also establish definitions and collect data to qualify domestic and foreign port facilities for cargo security. Customs can extend the reach of its security by training **brokers, OTI’s, freight forwarders** to assist importers and exporters for participation in the C-TPAT. While learning how to best employ the new security inputs Customs should be able to improve selectivity for targeted examination. The development and implementation of supply chain security audits should also help Customs stretch its resources in a similar fashion as with its regulatory compliance focused assessments.

Where Might Brokers & OTI’s/Forwarders Fit In?

Customs brokers, OTI’s, freight forwarders and **nvoc’s** can contribute to the “known shippers” database and qualify shippers on shipping documents based on established guidelines. These parties can also assist with training, updates and retraining of importers and exporters for C-TPAT and file C-TPAT reports. They might also work with overseas offices or agents to establish the “chain of custody” for international shipments, and provide for export examination at Customs direction.

What About C-TPAT?

Customs brokers, OTI’s, freight forwarders know the traders, U.S. trade regulations and trade practices. Many of these firms already act as trade consultants. Most **customs brokers, OTI’s, freight forwarders** have overseas offices or agents to connect cargo security programs. **Customs brokers, OTI’s, freight forwarders** can help marry cargo security and regulatory compliance programs. They should also be able to quickly model standard cargo security programs. Model programs can be adapted to fit particular client trading needs and practices. Over time **Customs brokers, OTI’s, freight forwarders** could provide the basis for identifying best practices

Customs brokers, OTI’s, freight forwarders have resources to help implement the C-TPAT sooner rather than later. These companies can also assist with training, reporting, annual reviews and updates. They will inevitably assist Customs with disseminating new rules, regulations and directives. If this is truly a partnership, and if time is of the essence, Customs will need help from **Customs brokers, OTI’s, freight forwarders** to get cargo security programs in place as soon as possible.

Jump Starting C-TPAT

Immediate steps need to be taken; terrorists won’t wait until we’re ready for them. Since the “chain of custody” data stream will give the best opportunity for real time risk based analysis it should be developed and implemented without delay. Likewise, creation of the “known parties” database must be a top priority. Time can be saved and false starts avoided by borrowing from the FAA “known shipper” and FDA “Hazard Analysis Critical Control Point Program” (HACCP) experience.

Weighing The Risk

While it is always necessary to challenge perceptions and penetrate appearances, historical data and common sense must also inform the criteria against which risk assessments will be made. At a high level, for example, long established firms likely pose less risk than new companies. Large manufacturers with mature and well developed security regimes likely pose less risk than a two person reseller. Well known warehouses, carriers and intermediaries likely pose less risk than their new competitors. Firms that screen employees likely pose less risk than those that do not. Goods that are transshipped or subjected to hand-offs probably pose a greater risk than direct shipments. However, bills of lading “Consigned to Order” may not indicate a greater risk than those with a named consignee. A “chain of custody” can help weigh the risk.

The “Chain of Custody Dataset” (CCD)

A “chain of custody dataset” should be designed by Customs and “the Trade”. Producers, manufacturers, and fabricators would start data collection by identifying their cargo security qualification, inputs and intermediary or end products, hazmat classification, etc. This will provide the deep penetration into supply chain risk evaluation that is necessary to detect security risks from the remotest source to the final receiver. Successive processors would likewise update the data set with appropriate and timely input yielding a real time analog of goods in the supply chain and their associated security qualifiers.

OTI/freight forwarder data entry may help validate other inputs, certifying whether the goods came from a “known shipper” and were handled by a “known” warehouse, trucker, etc., and verify the seal numbers. Government agents will introduce security checkpoints in the “chain of custody” and note any export examination. Carriers will also verify seals as all hand-offs are recorded along with the security qualification of the handlers. Customs brokers may review the “chain of custody dataset” much as they now review commercial data, and electronically signal a corresponding cargo status prior to arrival as part of the cargo clearance process.

What Will The “CCD” Tell Us?

The “CCD” will tell government security agents whether the “cast of characters” involved with a shipment consisted of “known parties”. It will record the cargo security qualification for each custodian, and whether the cargo was examined by a security agent during its transit. Information as to how the shipping container was secured and at what points it was checked for tampering will be highlighted, along with answers to other important questions in evaluating the level of risk the shipment poses, such as:

- Was the cargo diverted in transit?
- Did the shipping container arrive with the original seal intact?
- Is the documentation consistent with a secured chain of custody?

It is axiomatic that the chain is only as strong as its weakest link, and the “CCD” will alert those officials responsible for supply chain security to weaknesses on a real time basis, and without encumbering commercial instruments, interfering in the transit of “safe” goods, or distorting traditional roles of the multiplicity of parties involved in the supply chain.

Can the “CCD” Be Trusted?

Recognizing that the most powerful motivation across any broad spectrum of participants will be the individual perception of self-interest it is easy to see why the “chain of custody dataset” will obtain quick enrollment throughout the entire “cast of characters”. The supplier wants to sell its products. The OTI/freight forwarder wants to arrange the export. The warehouses and carriers want to handle the shipments. All parties involved have investments to protect. Perhaps the most important reason to rely on such a system is that there are too many parties involved in trade for governments to monitor all of them successfully. Also of importance is that there is an immediate need to do something to reduce the threat of terrorism and it is easier to effectively audit a controlled number of firms that can be regulated and/or sanctioned. The “CCD” should also enable “sting” operations to assure compliance with directives. That is already being done by the FAA.

Examine More Cargo

No system of security screening can be relied upon to identify every shipment that potentially poses a risk to our national security. Customs was required by law to examine 10% of imports until the late 1960’s. Limited resources and heavy reliance on “selectivity” to identify shipments at risk with regard to commercial compliance have reduced Customs’ examinations to 1% - 3% of all import shipments. Moreover, Customs examines less than 1 in 200 export shipments. It must also be recognized that it may be too late to discover a weapon of mass destruction after it arrives in the United States. Examination patterns must be adjusted to increase random examinations, provide levels and vigilance that are consistent for all ports to avoid port of entry targeting by terrorists, and reward “known” importers and exporters with fewer examinations if they have a cargo security plan in place and use only “known” parties in their supply chain.

It should also be noted that until a universal nomenclature is agreed, Customs officers, PGA’s and carriers will understand accurate plain language cargo descriptions far better than tariff subheadings.

Why Examine More Cargo?

Terrorists know that Customs has limited resources and will seek to exploit that. If more shipments are examined, attempts at smuggling are more likely to be discovered. More examinations will have the collateral benefit of improving regulatory compliance. Additional cargo examinations will likewise discourage copycat terrorists, drug smugglers and terrorists looking for easy targets.

How Can More Cargo Be Examined?

Customs should “target” high risk shipments for examination prior to exportation. It should be considered whether to permit licensed brokers, OTI’s/freight forwarders, warehouses and other neutral “3rd parties” to perform cargo security examinations and report their findings. Any creation of a supply chain security offset fee against the cargo will surely be controversial and any proposal to tax cargo in this way should only follow widespread consensus building within “the Trade.” In view of the Harbor Maintenance Fee history, care must be taken that the entire burden doesn’t inadvertently fall upon imports.

What Else Can The Government Do?

Whether or not manifests will be a vehicle for collecting cargo security screening data, in order to obtain accurate detail information without exposing the cargo to greater risk of pilferage, or compelling traders to reveal sensitive information to competitors it may be necessary to exempt cargo manifests from “FoIA”. The current means for avoiding publication of manifest information can not serve for these purposes, and the current environment has resulted in substantial resistance on the part of traders, **customs brokers, OTI’s, freight forwarders** and **nvoce’s** to production of meaningful manifests data.

It might also be wise to immunize informants, including protecting the anonymity of informants (in balance with defendant rights) who might not otherwise be inclined to breach an “agency relationship”. Our public officials should encourage foreign governments to license, certify, audit and control their brokerage and forwarding industry. It may also be necessary to enhance incentives for participation in C-TPAT and other voluntary security programs.

If We Fail?

The loss of life and property could be unimaginable. U.S. trade could grind to a halt. American exporters could lose foreign markets. Production lines and manufacturing would idle. Retail inventories would give way to scarcity. Carriers would suffer severe losses, loan defaults and lay-offs. **Customs brokers, OTI’s, freight forwarders, nvoce’s**, warehouses, truckers and dependent business would likewise suffer. Strategic resources could become at risk. Deflation and depression could well follow.

Again, What Are Our Assets?

Customs brokers licensed by the U.S. Treasury, **ocean transportation intermediaries** (OTI’s) licensed by the Federal Maritime Commission, approved **indirect air carriers** (IAC’s) regulated by the Federal Aviation Administration, **nvoce’s**, bonded cartmen, bonded warehouses, bonded air & ocean carriers, Customs personnel to train the legions in this war and regulate the battlefield are some of the important assets to be enlisted in this struggle.

To Find a Needle in the Haystack You Can -

- Make the haystack transparent (employ x-ray and gamma ray technology)
- Make the needle stand out more (know the parties)
- Limit the amount of hay you have to examine (C-TPAT)
- Accelerate the process (enlist brokers and OTI’s/forwarders for C-TPAT implementation)
- Search more hay (3rd party examination adjunct)
- Thread the needle before it enters the haystack (establish “Chain of Custody” documentation)

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