

Distr.
GENERAL

UNCTAD/SDTE/TLB/2004/1
26 February 2004

ENGLISH ONLY

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**CONTAINER SECURITY:
MAJOR INITIATIVES AND RELATED INTERNATIONAL DEVELOPMENTS**

Report by the UNCTAD secretariat

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A. INTRODUCTION AND BACKGROUND*

1. Following the events of September 11th, 2001, safety and security considerations have been at the forefront of international concerns. The need to enhance security worldwide is recognized by all Governments and industry. As world trade is largely dependent on maritime transport, the security of the maritime transport system has received particularly significant attention. The United States Government, in response to its own analysis of the vulnerability of the maritime transport system, has taken the lead and initiated a considerable number of measures aimed at enhancing the security of maritime traffic, including port, vessel and cargo security. Given that a reported 50% of the value of all U.S. imports¹ arrive in sea containers, much of the focus has been directed at the particular security challenge posed by maritime container shipments and a number of specific measures relevant to container security have been implemented in the form of laws, regulations and voluntary partnership programs.

2. Several International Organisations, including World Customs Organization (WCO), International Labour Organization (ILO) and International Maritime Organization (IMO), have also reacted swiftly to the need for strengthened security measures at the global level and, over the past two years, have been working on a wide range of measures to enhance maritime transport security.

3. Clearly, different sets of rules and measures which have been implemented or are being considered internationally need to be properly understood and their potential impacts on trade and transport, particularly of developing countries needs to be assessed. Against this background, the Commission on Enterprise, Business Facilitation and Development, at its 7th session in February 2003² and at its 8th session in January 2004, recommended that the UNCTAD secretariat should study and analyse the impact of new security initiatives on the international trade and transport of developing countries and disseminate the information.³

4. This report provides a first step in this direction, by focusing on the main measures relevant to maritime container security, namely those initiated by the U.S., and by presenting the most important related international developments in context. The aim of the report is to present a clear overview over the new security environment and to offer some preliminary analysis of its potential impacts for the trade and transport of developing countries. In part B of the report, the major relevant U.S. initiatives are presented and some of their potential implications for developing countries are considered. Part C focuses on related international developments, providing a brief overview over the most important initiatives. The report concludes in Part D with some final remarks.

* This report is based on information available on 10 February 2004. All effort has been made to ensure the accuracy of the information provided.

¹ See <http://www.cbp.gov>. For global liner traffic and container port throughput figures, see *UNCTAD Review of Maritime Transport 2003* (www.unctad.org).

² See the Report of the Commission on Enterprise, Business Facilitation and Development on its seventh session TD/B/EX(31)/5 - TD/B/COM.3/55, paragraph 9 of the agreed recommendations.

³ See the Report of the Commission on Enterprise, Business Facilitation and Development on its eight session TD/B/COM.3/64, paragraph 6 of the agreed recommendations.

B. U.S. INITIATIVES

5. The main U.S. initiatives relevant to maritime container security are the **Customs Trade Partnership Against Terrorism (C-TPAT)**, the **Container Security Initiative (CSI)**, which focus on establishing partnership relations with industry actors and ports, as well as the so-called **"24-Hour Rule"** and recent regulations under the **U.S. Trade Act of 2002** which amend U.S. customs regulations (19 CFR) and are aimed more specifically at obtaining and monitoring information on cargo. The U.S. Customs and Border Protection Service⁴ (CBP, hereafter "U.S. Customs") is the relevant government agency in charge of the administration and enforcement of these programs and regulations.⁵

I. Overview over major relevant initiatives

1. Customs Trade Partnership Against Terrorism (C-TPAT)

6. The Customs Trade Partnership Against Terrorism (C-TPAT) is a joint government-business initiative aimed at building "co-operative relationships that strengthen overall supply chain and border security".⁶ It is intended to enhance the joint efforts of both entities in developing a more secure border environment, by improving and expanding the existing security practices. C-TPAT is a non-contractual voluntary agreement, terminable at any time by written notice by either party. Initially, importers, carriers (air, rail and sea) as well as U.S. port authorities/terminal operators and certain foreign manufacturers are eligible to participate in the program. However, it is envisaged to broaden participation to include actors of all international supply chain categories.⁷ Applicants wishing to participate need to fill in a *C-TPAT Supply Chain Security Profile Questionnaire* and to sign a *C-TPAT Agreement to Voluntary Participate*. This *Agreement* includes a list of security recommendations/guidelines the applicant undertakes to apply and respect, but also to communicate to his business partners in the supply chain and work toward building the guidelines into relationships with these companies.

7. Recommendations and guidelines have been tailored to different categories of participant to suit different segments of the supply chain. A sea carrier, for instance, when signing the C-TPAT Agreement, agrees to enhance his efforts to improve "the security for the transportation of passengers, crew, conveyances and cargo throughout the commercial process". He accepts to work at establishing, improving or amending his security processes and procedures in accordance with the C-TPAT security recommendations. Importantly, "where the carrier does not exercise control of a production facility, distribution entity, or process in the supply chain, the carrier agrees to communicate the recommendations/guidelines to those entities". These recommendations include tasks such as controlling all access to vessel while in port, identifying

⁴ On March 1, 2003, the U.S. Customs Service was transferred to the new Department of Homeland Security. The border inspection functions of the Customs Service and other U.S. government agencies with border protection functions were organized into the Bureau of Customs and Border Protection (CBP). Throughout this report, the term "U.S. Customs" will be used to refer to CBP.

⁵ **Please note** that relevant sections of chapter 19 of the United States Code (19 U.S.C.) and the corresponding regulations (19 CFR) referred to in this report may be accessed online via the CBP website (<http://www.cbp.gov>, under "legal"). Also available on the website are recent Federal Register Notices amending the relevant regulations. Other Public Laws referred to in this report may be accessed online at <http://thomas.loc.gov>.

⁶ For more information, see <http://www.cbp.gov>.

⁷ For eligibility requirements, see <http://www.cbp.gov>.

all persons boarding the vessel, ensuring that all manifest/bill of lading submitted for cargo to be shipped are complete and providing this information to Customs, participation in the Automated Manifest System (AMS), visual inspection of all empty containers (to include the interior of the container) at the foreign port of loading, and ensuring that high security seals are affixed on all loaded containers. Another recommendation, which is of particular importance, is the undertaking to ensure that contract companies who provide vessel related services commit to the C-TPAT security recommendations/guidelines as well as periodically review their security commitments to detect weaknesses in security.⁸ Upon request, the C-TPAT participant needs to provide documentation to demonstrate compliance with each C-TPAT recommendation.

8. U.S. Customs, on their part, mainly undertake to assist the carrier in his efforts to enhance security and to expedite clearance of cargo at the U.S border. Once a company becomes a C-TPAT member, its risk score in the Automated Targeting System is partially reduced.⁹ U.S. Customs also undertake to conduct initial and periodic surveys to assess the security in place and suggest improvements. Relevant *C-TPAT Validation Process Guidelines*, detailing the relevant security criteria, have been published on the U.S. Customs website.¹⁰

9. C-TPAT operates on the basis of individual "non-contractual voluntary agreement" to implement certain recommendations. The parties are thus expected to use their *best endeavour* to comply with the C-TPAT recommendations and to enhance the security throughout their supply chain, without, however, incurring liability in case of errors or non-compliance. U.S. Customs may remove a company from C-TPAT membership if they determine that its commitment is not serious or that it has intentionally misled Customs.¹¹

10. The process was opened in 2002, with strong support from virtually all of the major liner shipping companies.¹² By May 2003, more than 3000 companies had signed up, including 2,119 importers, 20 U.S. port authorities/terminal operators, 410 carriers and 806 brokers/freight forwarders/NVOCCs.¹³

2. Container Security Initiative (CSI)

11. The Container Security Initiative (CSI) is another main program concerning ocean going sea containers, which was developed shortly after September 11, 2001.¹⁴ CSI is based on the premise that the security of the world's maritime trading system needs to be enhanced and that it will be more secure if high-risk cargo containers are targeted and screened before they are loaded. The initiative aims at facilitating detection of potential problems at their earliest possible opportunity and is designed to prevent the smuggling of terrorists or terrorist weapons in ocean-

⁸ For a detailed list of recommendations, see sample C-TPAT Agreements, available at <http://www.cbp.gov>.

⁹ As a result, the likelihood of inspections for Weapons of Mass Destruction (WMD) is decreased; see *Container Security: Expansion of Key Customs Programs will require greater attention to critical success factors*, General Accounting Office, GAO-03-770, Washington, July 2003, (hereafter *GAO-03-770, Container Security*) available at <http://www.gao.gov>.

¹⁰ <http://www.cbp.gov>. For sea carriers, the guidelines refer to Conveyance Security, Access Controls, Procedural Security, Manifest Procedures, Personnel Security, Education and Training Awareness and Physical Security.

¹¹ See *GAO-03-770, Container Security*, p. 15.

¹² J. D. Kimball and F. Wall, *Shipping and the fight against terrorism*, *Journal of International Maritime Law* 9 [2003] 65.

¹³ *GAO-03-770, Container Security*, Table 6; see also *US pushes on with next round in CSI bout*, *Lloyd's List*, 24.6.2003.

¹⁴ For further information, see <http://www.cbp.gov>. Apparently, there is no government regulation establishing the CSI requirements, see *WTO Trade Policy Review United States* (WT/TPR/S/126), para. 21 (<http://www.wto.org>).

going cargo containers.

12. The Container Security Initiative is a four-part program, which involves:

1. establishing security criteria to identify high-risk containers based on advance information;
2. pre-screening those containers identified as high-risk before they arrive at U.S. ports;
3. using technology to quickly pre-screen high-risk containers, including radiation detectors and large-scale x-ray and gamma ray machines;
4. developing secure and "smart" containers.

13. To implement CSI, and in particular its second aspect, U.S. Customs have been entering into bilateral agreements or partnerships with foreign governments. The agreements provide for the deployment at foreign ports of U.S. officers who will have to target and pre-screen U.S. bound cargo containers before they are shipped. U.S. officers are intended to work with host nation counterparts. It should be noted that U.S. authorities offer reciprocity to participant countries, which can therefore send their customs officers to major U.S. ports to target the containers bound for their countries.¹⁵

14. The goal of CSI is to improve security without, however, slowing down the movement of legitimate trade. Thus, wherever possible container screenings are to be carried out during periods of down time, when containers sit on the docks waiting to be loaded on a vessel and screenings should not, except in rare cases, have to be carried out again in the United States. In the event a cargo container suspected for potential weapons of mass destruction (WMD) is discovered, it will not be permitted to continue on its course to a U.S. port. Moreover, if it is loaded on a ship bound for a U.S. port, that ship will not be allowed access to U.S. territorial waters.¹⁶ It is not clear whether there is any degree of legal recourse available in case of negligence in the course of inspections leading to errors or physical damage to containers.¹⁷

15. The initial aim of U.S. authorities was to implement CSI at the ports that send the largest volumes of cargo containers into the United States, in a way that facilitates detection of potential security concerns at the earliest possible opportunity.¹⁸ Several mega ports handling a very large volume of containers bound for the United States have signed declarations of principle to join CSI and are at various stages of implementation.¹⁹ U.S. Customs intend, in a second phase, to expand the program to additional ports, still based on volume, location and strategic concerns.²⁰ In this context, it should be noted that almost 90% of U.S. inbound maritime container trade originates in 30 countries, several of which are small developing nations.²¹ For instance,

¹⁵ It appears that so far, Japan and Canada have agreed reciprocal CSI agreements and station their own customs personnel in U.S. ports, see <http://www.cbp.gov>.

¹⁶ GAO-03-770, *Container Security*, p.11; also CBP website at <http://www.cbp.gov> (*Frequently asked questions about CSI*).

¹⁷ *The UK Government and the US Container Security Initiative*, Davies Lavery Report No. 14, Kay Pysden and Samuel Pérez-Goldzweig, (www.davieslavery.co.uk).

¹⁸ See <http://www.cbp.gov>.

¹⁹ For a list of ports and for further information, see <http://www.cbp.gov>. According to U.S. Customs, the top 20 ports handle approximately 66% of U.S. destined containers. See also table reproduced on page 7.

²⁰ It appears that it is planned to expand CSI to cover altogether 40-45 strategic ports, GAO-03-770, *Container Security*, p. 9.

²¹ Information relates to U.S. Foreign Waterborne Trade, Containerized Cargo (in TEUs) imported into the U.S. in 2002, see http://www.marad.dot.gov/Marad_Statistics/Con-Cnty-02.htm. See table reproduced on page 8.

shipments from countries in South and Central America account for almost 10% of all maritime containers shipped to the U.S., but it appears that so far, none of the ports in the region participate in CSI. Shipments from China and Hong Kong however, account for almost 45% of all containers (in TEUs) shipped to the U.S.

Dates of CSI Bilateral Arrangements and Deployments by Targeted Ports, May 2003

Country	Port	Date arrangement signed	CSI team deployments in first year	CSI team deployments after first year
Smart border accord				
Canada	Halifax	December 2001	March 2002	
	Montreal	December 2001	March 2002	
	Vancouver	December 2001	March 2002	
Top 20 ports				
Belgium	Antwerp	June 2002		February 2003
China	Shanghai	October 2002 ^a		
	Yantian	October 2002 ^a		
France	Le Havre	June 2002	December 2002	
Germany	Bremerhaven	August 2002		February 2003
	Hamburg	August 2002		February 2003
Hong Kong	Hong Kong	September 2002		May 2003
Italy	Genoa	November 2002		
	La Spezia	November 2002		
Japan	Tokyo	September 2002		
	Nagoya	September 2002		
	Kobe	September 2002		
	Yokohama	September 2002		March 2003
The Netherlands	Rotterdam	June 2002	August 2002	
Singapore	Singapore	September 2002		March 2003
South Korea	Pusan	January 2003		
Spain	Algeciras	January 2003		
Taiwan	Kaohsiung			
Thailand	Laem Chabang			
United Kingdom	Felixstowe	December 2002		
CSI strategic ports				
Malaysia	Klang	January 2003		
	Tanjung Pelepas	January 2003		
Sweden	Gothenburg	January 2003		May 2003

^a China has "agreed in principle" to join CSI but has not signed a CSI bilateral arrangement.

Source: *Container Security: Expansion of Key Customs Programs will require greater attention to critical success factors*, General Accounting Office, GAO-03-770, Washington, July 2003, Table 5

**U.S. Foreign Waterborne Trade
Containerized Cargo**

**Calendar Year 2002
(Thousands of Teu's)**

Country	Total	Export	Import	Rank
China	4,814	887	3,926	1
Japan	1,575	879	697	2
Hong Kong	1,515	317	1,198	3
Republic of Korea	912	424	488	4
Taiwan	877	283	594	5
Germany	625	178	447	6
Italy	610	110	500	7
Thailand	490	114	376	8
Brazil	474	135	339	9
United Kingdom	455	230	225	10
Netherlands	417	173	244	11
Belgium	412	239	173	12
Indonesia	404	129	275	13
India	332	114	218	14
Malaysia	307	62	245	15
France	282	83	200	16
Guatemala	250	102	148	17
Spain	241	78	163	18
Dominican Republic	233	142	91	19
Honduras	233	103	130	20
Philippines	227	83	144	21
Australia	208	125	83	22
Costa Rica	207	78	129	23
Singapore	181	98	83	24
Chile	171	53	118	25
Turkey	152	64	88	26
Colombia	141	67	74	27
Venezuela	134	89	45	28
Israel	125	50	75	29
Ecuador	116	33	84	30
Top 30	17,120	5,519	11,600	
Top 30 % of Total	86.8%	81.0%	89.8%	
Total All Countries	19,729	6,814	12,916	

Source: http://www.marad.dot.gov/Marad_Statistics/Con-Cnty-02.htm

16. As regards the costs of implementation of CSI, it should be noted that while U.S. Customs are paying to deploy their officers and computers in the foreign ports, host seaports need to

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