

LAW OFFICES
COURI AND COURI

JOEL A. WEBBER
(Direct 847 446 0044)
www.transportbusinesslaw.com

Memorandum

July 8, 2005

TO: Distribution

FROM: Joel Webber

RE: Telephone Roundtable Today – Post-March 25 C-TPAT

Summary Highlights

1. Group consensus that new framework represents **major potential change** to cross-border/port logistics operations: a) Checkpoint impediments for freight, and b) Costs to industry to conform to C-TPAT.
 - a. Just how bad remains to be seen – serious concern expressed by both big company outlook and that of SME's
 - b. Some hope expressed for a) benefit by expediting and b) harmonization among countries' respective regimes

2. **Legal perspective:**
 - a. Different sort of regulatory scheme – more fluid, less limit on agency's discretion due to lack of “one-size-fits-all” rules
 - i. Can argue this good – flexibility, supply chain techniques ...
 - ii. Or unfair to commercial operators – agency always “wins”
 - b. This regulatory scheme so generalized that full picture requires:
 - i. Track record of agency behavior
 - ii. Supply chain & security best practices

→ To date, first item is key – and no written guidance beyond 4-pager, website, FAQ's accessible only to members and periodic seminars
 - c. As much about agency's moral/economic suasion as anything else:
Example of ocean liner shipping firms – Not required by statute? We'll make it a condition of C-TPAT

3. *Harmonization among countries?*

- a. WCO June agreement – sure seems to point that way
- b. Some skepticism – will US Customs defer to others on standards?
 - i. Perhaps more a matter of other countries meeting the US test/not
 - ii. Will WCO "baby teeth" be judged sufficient by agency?
- c. Timing issue:
 - i. WCO harmonization effects not operative before November implementation deadline for post-March 25 C-TPAT
 - ii. PERIOD OF TRANSITION

→ **WCO may provide harmonization, after a transition (how long?)**

4. *Inherent, ongoing tension between supply chain disciplines and security enforcement* from agency:

- a. Joy: We need a detailed process that can be adopted (and so say Deming, Hammer, GE 6 Sigma, last 15 years of supply chain development, etc, etc)
- b. Beth: From a security perspective, supply chains have to be addressed according to their specific traits – enforcement not meaningful or responsive without this (got to believe all/most law enforcement would agree – protection is all about specificity; can't generalize)

→ **How to integrate business process** (an enterprise-specific phenomenon) and **security enforcement** (going after a universe of freight and their multiple possible threat vectors)?

Critical Points

- Scope and specificity of standards
 - 1) Do they really mean each factory in China – or just larger players in a given supply chain?
 - 2) Audit trail
 - Simply assert (perhaps with low-impact validation visit)?
 - Prove it (more like life under NAFTA)?
- SME's less bargaining power than largest – how to comply regarding foreign suppliers?
- Standardization among different countries versus US – run standards, etc.

- Further to that, WCO “core elements” in document:
 1. Harmonize cargo data
 2. Non-US countries’ use as proxy for C-TPAT standards
 3. Cargo-receiving nations can ask standards for sending
 4. Clarification of benefits – work in progress

→ Design to spark “capacity-building”
- “Information Technology Security”
 - “Password Protection” = primitive but ascertainable security level
 - “Accountability”: These are terms of art, or otherwise have tangible meaning to IT professionals
 - Read in conjunction with risk assessment language at head of document, this has tangible meaning – cross-reference work at NSA, Carnegie Mellon
- How difficult:
 - Certainly easier for larger than smaller firms
 - But larger firms – such as high-volume automotive sector – fluidity a challenge regardless of company/sector size
- Potential burden to 3PL’s, other service providers: Operational burden and corresponding costs, but lack benefits on which to build ROI for such providers (as contrasted, say, with shipper, consignee, carriers who may come to enjoy a more direct result)
- (What Andre would have talked about) Authorized Economic Operators – EU counterpart to “Green Lane” Mr. Bonner has promised where “Smart Containers” used.
 - With a) Use of CSI port¹, b) C-TPAT member in good standing, and c) use of “Smart Container” (electronically indicate if surface of sea container, truck trailer, etc., has been tampered with en route): “Green Lane”, or immediate release upon arrival.
 - Mr. Bonner says he expects this by year – end 2005
 - Lots of operational, tech issues to solve before this actually happens
 - Mr. Bonner’s envisioned end-game:
 - 3-tier at border/port check-points:
 1. Basic (no C-TPAT at all – as Mr. Bonner says: “Good luck” if there’s a problem at border or port)
 2. C-TPAT membership (lower ATS – automated targeting system – score reported to Field Ops personnel at one’s arrival – result in “faster” passage; without specifying more about what “faster” means)
 3. C-TPAT plus “Smart Container” (immediate release upon arrival)²

¹ One of 35 or so ports validated by US Customs for their ability to and consistency in vetting outbound cargo – e.g., Yokohama has US Customs personnel on site that work with local authorities to search and otherwise vet outbound sea cargo bound for the US.

² Lots of debate about what this means, how viable, etc. Nevertheless, Mr. Bonner seems set in this direction.

Did Not Get To

- Other countries – US the only one to do the March 25-style C-TPAT, so far, but note:
 - Canada: Last week's changes on advance notice on imported goods ("Reporting of Imported Goods Regulations")³
 - To be integrated into internal CBSA data flows to enable expedited clearance at checkpoint (all loadings on, say, a less-than-truckload van at the border to facilitate quick release/bypassing of routine searches if either paperwork or electronic filings in order)
 - EU: Establishment of Community Customs Code
 - Pending regulation proposal⁴
 - Next release July 13, 2005
- Same "rumor mill" that turned out to be correct on March 25 changes says the following should happen by 2005 end:
 - NVOCC's to be included in C-TPAT somehow
 - Carriers to be included in C-TPAT

³ (Canada Gazette <http://gazetteducanada.gc.ca/partII/2005/20050629/pdf/q2-13913.pdf>)

⁴ http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_117/l_11720050504en00130019.pdf