



White Paper

***Observations and Comments on
Possible Revisions to the Required Data Filing Components of the
EU Maritime Containerized Cargo Risk Assessment System***

August 2011

I. Issue

The European Union's advance import cargo risk assessment system for international containerized cargo arriving in the EU by sea became effective in January 2011. A question under discussion within the European Commission is whether that system should be modified to acquire additional information for cargo screening for international maritime containerized cargo being imported into the European Union (EU).

This question requires addressing several issues:

- First, clearly defining *what* additional data the Commission and the Member States may want the Member States' Customs data systems to receive;
- Second, identifying *who* is the party that has this information;
- Third, identifying *how* this information is to be obtained; and,
- Fourth, defining *when* this information must be provided.

The World Shipping Council (WSC) was requested by various Commission officials to prepare a White Paper that would describe the information shared and the relationships between the various parties in international maritime containerized supply chains, and how this would relate to deliberations within the Commission about changing the current advance cargo shipment data filing system in order to acquire additional shipment data. This White Paper does not advocate any particular approach for whether, or how, to obtain additional information for cargo risk assessment purposes (other than restating the long-held position of WSC that a "dual filing" system, requiring entry summary declaration (ENS) filings of both ocean carriers and freight forwarders, would be preferable to the status quo). Rather, the White Paper is a preliminary attempt to identify and discuss aspects of these issues in order to be of assistance to the Commission and Member States as they consider these matters. It is based on the World Shipping Council's (WSC) understanding of the questions that Commission staff have raised about the current system and about possible measures to change that system. Specific attention is given in the paper to a concept that we understand is being considered within the Commission to require the identity of the "buyer" and "seller" of import goods to be filed prior to vessel loading in the foreign load port.

This paper addresses these issues only in the context of maritime transport of containerized cargoes, and is not intended to express any views on what may be appropriate

for other transportation modes' shipments.¹ There are significant differences between how the various transport modes operate, and what may be appropriate for one mode may not be appropriate for the other.

Because any significant changes to the current system will have consequences for traders, the Member States, and the continued efficient flow of European commerce, we strongly recommend that these questions and issues be considered in a thorough and transparent manner with the trade community so that any changes are well understood and reflect an understanding of the operational, commercial and information technology (IT) systems issues which would have to be addressed.

II. Background: The Parties

1. ***Ocean Carriers:*** International maritime liner shipping involves ocean carriers moving containerized cargo for their customers (shippers) pursuant to the terms of a transportation contract between the ocean carrier and the shipper. The data submitted pursuant to the current entry summary declaration (ENS) filing requirement is submitted prior to loading a container onto a ship destined for Europe, and is usually submitted by the ocean carrier. Under existing regulations, the ENS data is capable of being drawn from information that is present in the ocean carrier's bill of lading, which is, or evidences, the carrier's transportation contract with the shipper. Ocean carriers are generally able to provide the current ENS data in the time and manner required.
2. ***Freight Forwarders:*** Many, but not all, of the ocean carriers' shipper customers are freight forwarders. In many European trades, freight forwarders may be involved in 60+% of the shipments. These percentages will vary by geographic trade lane and by ocean carrier. These freight forwarders are shippers in their relationship to the ocean carrier, but in turn they act as carriers, and resell the transportation service to their customers, who may be shippers in their own right (e.g. cargo owners) or may be other freight forwarders, who, again in turn, will have dealings and contracts with their own shipper customers.

¹ It is essential, however, that short sea shipping not be put at any competitive disadvantage with respect to road or rail transport. Thus, for example, if the Commission and Member States were to proceed with the idea of requiring "buyer" and "seller" information to be included in ENS filings (see discussion in Sections IV and VII later in this paper), ENS Filings for truck and rail cargo would need to be subjected to the same requirements.

Under the current system, when an ocean carrier's customer is a freight forwarder, the ENS filing will typically, and accurately, show the forwarder as the consignor and consignee of the shipment. Since 2005, ocean carriers have consistently recommended to the Commission that the ENS system be designed to require, not only ocean carriers to file ENSs providing advance cargo shipment information from their "master" bills of lading, but that freight forwarders also be required to file ENSs providing advance cargo shipment information from their "house level" bills of lading, showing the consignors and consignees from their transport contracts, as well. This "dual filing" approach is used by the U.S. and Canadian governments. The Commission and Member States chose not to require freight forwarders to file their house bill of lading information and not to establish such a "dual filing" system. As a consequence, the ENS filings today are typically made by the ocean carriers, based upon the information from the ocean carriers' bills of lading.

- 3. Importers and Exporters:** These parties are the cargo interests who ship the goods with carriers or forwarders, and who generally possess more detailed information about the products they wish to have transported into and out of Europe.

The Data Elements Annex to the World Customs Organization (WCO) SAFE Framework of Standards (hereinafter "WCO SAFE Framework") defines "exporter" as "[the] party who makes, or on whose behalf the export declaration is made, and who is the owner of the goods or has similar rights of disposal over them at the time when the declaration is accepted". "Importer" is defined as "[the] party who makes – or on whose behalf a Customs clearing agent or other authorised person makes – an import declaration. This may include a person who has possession of the goods or to whom the goods are consigned".²

The bill of lading or transport contract between the shipper and the carrier generally contains the information required for the filing of the ENS before vessel loading (i.e., cargo description, number of packages, container number, etc.). More specific information about imported goods is submitted to Customs by the importer or its agent when the goods are declared for free circulation (import). This normally occurs after the cargo is loaded onto a vessel in a foreign port, and may often be after it is unloaded in the European port of discharge. The information about the goods in the possession of the cargo interests is more extensive, detailed and item-level oriented than the transportation-related information about the cargo in the possession of the transportation provider (whether that is the ocean carrier or a freight forwarder).

² WCO SAFE Framework of Standards, June 2011.

4. **Consignor and Consignee:** The WCO SAFE Framework defines “Consignor” as “the party consigning goods as stipulated in the transport contract by the party ordering transport”, and “Consignee” as “[the] party to which goods are consigned” for delivery by the contract.³
5. **Buyer and Seller of the Goods:** Without meaning to oversimplify these terms, they are generally understood in this context to mean the last known person with title to the goods before they are shipped from the origin port, and the last known purchaser of the goods at destination.⁴

Buyer and seller are not synonymous with consignor and consignee.

Goods may be intended for sale but not have an identified buyer at the time they are shipped. Or, goods may be shipped without there being a buyer (or seller), e.g. product samples, products in need of – or returning from - repair or replacement, or intra-company shipments. In addition, goods may be sold in transit, and thus the identity of the buyer and seller of the goods (and who holds title to the goods) may change from the time the transportation of the goods begins until the time delivery is made.

Further, the financing of a purchase may affect the identity of the parties in the goods’ documentation. For example, if a bank is financing Company X’s purchase of goods, Company X may be the “buyer”, but the bank could be the consignee in order to ensure its interests are protected.

Discussion

The above discussion of the parties involved in the transport and importation of international maritime containerized shipments demonstrates: first, that the various parties have different roles, rights and obligations; second, that whereas some parties are identified and defined in terms of their transportation-related functions, others are identified and defined according to commercial transactions unrelated to transportation; and third, that different parties have different first hand knowledge of various information that may be of interest to Customs authorities.

³ Data Elements Annex to WCO SAFE Framework of Standards, June 2011.

⁴ The Data Elements Annex to WCO SAFE Framework defines “buyer” as “a party to which merchandise or services are sold”, and “seller” as “a party selling merchandise or services to a buyer”.

The current advance import cargo information filing system for maritime containerized cargo brought into the European Union is based on a *single* filing being required (the ENS), with the legal filing obligation being imposed on the ocean carrier, and with all of the currently required ENS information able to be obtained from the carrier and shipper's normal transportation contract.

There can be different approaches. The United States government requires importers to file ten (10) data elements⁵ about their shipments to U.S. Customs; eight of these data elements must be filed 24 hours before vessel loading via a separate filing called an Importer Security Filing (ISF), and two of these data elements can be provided 24 hours prior to the goods' arrival in the U.S. In the U.S. trades, this produces two or three sets of filings to Customs for maritime containerized cargo prior to the cargo being loaded onto a vessel destined for the U.S.: one from the ocean carrier; one from the freight forwarder (if there is a freight forwarder⁶ issuing a bill of lading involved); and, one from the importer⁷. In each of these cases, the U.S. system obtains the desired information from the commercial party with most direct knowledge of the relevant information.

⁵ These ten data elements in the U.S. Importer Security Filing are: 1) the "seller" of the goods (meaning the "name and address of the last known entity *by whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided"); 2) the "buyer" of the goods (meaning "the name and address of the last known entity *to whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided"); 3) the importer of record number or foreign trade zone applicant identification number; 4) consignee number (with that number indicating the party "on whose account the merchandise is shipped") ; 5) manufacturer (or supplier); 6) ship to party (not to be confused with "notify party"); 7) country of origin of the goods (meaning the country of manufacture, production or growth of the article); 8) commodity (HS) code number at least to the six-digit level; 9) the container stuffing location (the name and address of the physical location where the goods were stuffed into the container); and 10) the name and address of the party who stuffed the container or arranged for the stuffing of the container.

⁶ In the U.S., a freight forwarder that issues a bill of lading is referred to as a "non-vessel operating common carrier" or NVOCC. Further discussion of this issue can be found in footnote 10.

⁷ The Importer Security Filing data may be provided in one filing prior to vessel loading, or in two phases with eight data elements prior to vessel loading and two data elements being provided prior to vessel arrival.

The ten data elements from the U.S. ISF were recently included in the WCO SAFE Framework as additional data elements that Customs authorities could decide to require *importers* to submit to Customs prior to vessel loading. Specifically, the WCO SAFE Framework refers to an “Import Goods declaration” to be lodged by the importer or its representative with the specific data elements that may be required to be included in such declaration listed in the Data Elements Annex.

The WCO SAFE Framework also refers to a “Cargo declaration” with specific advance data elements to be provided by ocean carriers and by freight forwarders that issue their own bills of lading. These data elements can all be derived from the bill of lading.

As noted above, the European ENS system currently is based on a single data filing before vessel loading. Our understanding from the Commission is that the Member States wish, for the foreseeable future, to retain a single filing regime, rather than adopt a dual or triple filing regime. At the same time, the Commission has stated a desire to collect more advance cargo shipment data than the current ENS provides *and* more data than transportation contracts (the basis for ENS data) contain.

The challenge in trying to avoid the creation of another filing alongside the carrier’s ENS filing is that expanding the required data to be filed in an ENS beyond the current data list or beyond what is in the ocean carriers’ transportation contract would mean that commercial information must be provided to the ENS filer that would not otherwise be provided to that person in the normal course of its business. Another challenge that has arisen is the troubling discussion within the Commission of perhaps trying to avoid this reality by somehow “compelling consent” from an ocean carrier that it agree to some third party filing of an ENS with expanded data elements.

Finally, there is at times a disconcerting tendency for these discussions to focus not on what data is regarded by the Member States as necessary for cargo risk assessment, but what data could be required to be part of a continued single filing system – thus elevating existing IT system design to be the deciding criterion for what data can be obtained, rather than designing the IT system to acquire the data that is found to be necessary for proper cargo risk assessment. The information system should implement the strategy, not be the strategy.

III. Obtaining Additional Data: Forwarders’ Consignors and Consignees

WSC understands that there is some dissatisfaction within the Commission and some Member States with the fact that ENSs filed by ocean carriers under the current, single filing

system do not provide the consignee and consignor information from freight forwarders' house bills of lading. It was well known and repeatedly predicted in advance that this would be the result of the current approach, so this cannot be a surprise.

It also would not be accurate to characterize this as a problem with the "quality" of the current ENS data being submitted. The ocean carriers filing ENSs are providing accurate information about the actual consignors and consignees identified in their transportation contracts. What may be regarded as inadequate is that the Commission and Member States would like to obtain more data about the parties involved in the transportation and importation of the goods than is currently required by the Commission regulations. Specifically, this has led to a discussion of whether to require submittal of the identity of the freight forwarders' consignors and consignees from the forwarders' house bills of lading, and/or preferably the buyer and seller of the goods.

This paper next discusses these two separate issues.

If obtaining the identity of freight forwarder's consignees and consignors is regarded as necessary from a cargo risk assessment perspective, then the most logical and effective way to obtain this information is to require freight forwarders to file ENSs at the house bill of lading level before vessel loading, and thereby create a dual filing system. (For commercial and competitive reasons, forwarders would probably not support a regulatory requirement that the consignor/consignee information from their house bills of lading be provided to ocean carriers for ocean carriers to include in their ENS filings.) Unless freight forwarders were legally compelled by European law to provide the identity of their consignors and consignees to the ocean carrier filing the ENS -- something WSC does not propose -- only a "dual filing" ⁸ regime would provide Customs authorities with consignor/consignee information at both a master and a house bill of lading level. WSC has recommended this approach to the Commission since 2005, as has the European freight forwarder association (CLECAT); however, this approach has not been adopted to date.

If such a change were considered, it would be important to address several practical and operational realities, including the following:

- The present regime generates one ENS filing, usually from the ocean carrier, and there are a limited number of ocean carriers for the Member States information

⁸ "Dual filing" in this context does not imply the existence of two separate IT systems, but a single system that receives two ENS filings linked by a common data element (e.g., the master bill of lading number).

systems to interact with.⁹ The universe of freight forwarders is much larger, and there would be many more filers, from many locations around the world, interfacing with Member States' Customs authorities under a "dual filing" system. Customs authorities would need to address the criteria that must be met in order for forwarders around the world, some of whom will have no business presence in Europe, to have electronic data interchange connectivity with their data systems.

- Any security or other Customs communications relating to the treatment of a particular container must be made directly by the appropriate Customs authority to the ocean carrier that is responsible for the physical transportation and delivery of the container. The ocean carrier's ENS filing provides that assured communication channel. Information system linkage between a forwarder's ENS filing to Customs and the ocean carrier's ENS filing to Customs would be essential.
- Many containers tendered to ocean carriers by freight forwarders for transport include shipments from multiple, different freight forwarders. This practice is often called "co-loading". It allows different forwarders to combine their shipments in order to fill a container. The ocean carrier will have a transportation contract with one forwarder, who in turn will enter into agreements with other forwarders to share the space in the container. The ocean carrier will not know if a container is co-loaded, and it does not have visibility into the co-loading forwarders' identities or their business. A regime that calls for freight forwarder ENS filings would need to be designed to allow the receiving Customs authority to link all the forwarders' house bills of lading relating to cargo in the container to that specific container and to the ocean carrier's master bill of lading and ENS filing.
- Just as a forwarder may not wish to provide its consignor/consignee information to an ocean carrier for competitive reasons, co-loading forwarders may not wish to provide their house bill consignor/consignee information to each other. This means that, in a system that requires or produces forwarder ENS filings for co-loaded containers, there will not be a single forwarder filing ENS at the house bill level, but multiple forwarders each making their own ENS filings.
- It is important to understand that the consignor and consignee on a forwarder's bill of lading or on an ocean carrier's bill of lading is not necessarily the same as the

⁹ For example, the 28 members of the World Shipping Council carry approximately 90% of the world's containerized maritime cargo.

“buyer” and “seller” of the goods. While a consignor in a transportation contract might be the exporter (or seller) and a consignee might be the importer (or buyer), these are legally and commercially separate and distinct parties, and there is no necessary commonality. Also as discussed in more detail later, there may be multiple buyers or sellers in a shipment where there is one consignee or consignor. In short, the identity of the consignors and consignees in the transportation contracts between shippers and their carriers or forwarders do not provide a reliable “short cut” to obtaining the actual seller and buyer of the goods.

- A very substantial percentage of shipments into Europe do not involve a freight forwarder house bill of lading, but are based on an ocean carrier bill of lading with its shipper customer.¹⁰

IV. Obtaining Additional Data: *The “Buyer” and “Seller” of the Goods*

WSC understands from Commission officials that the current status of the Commission’s deliberations is that the Commission’s objective of acquiring more complete cargo information

¹⁰ It is important to understand that a freight forwarder can operate in two different capacities. A forwarder can act in essence as an agent for a shipper and book or arrange for the shipment and undertake documentation or other activities related to the transportation of the shipment by an ocean carrier. In such cases, freight forwarders do not act as carriers and do not issue bills of lading (“house” bills) to their customers. Alternatively, a forwarder may act as a carrier, in which case, it will issue a “house” bill of lading to its customer and will be contractually responsible to its customer for the carriage of the goods. (As noted in footnote 6, under U.S. law, when a freight forwarder acts as a carrier and issues a house bill of lading, it is not referred to as a freight forwarder, but is defined and regulated as a “non-vessel operating common carrier” or NVOCC.)

In cases where the forwarder is not acting as a carrier and is not issuing a “house” bill of lading, it may be involved in arranging for the transportation of the goods and may be identified in the ocean carrier’s documentation as the “notify party”, or the consignor, or the consignee, or none of these, depending on the transportation arrangement being made. In these cases, the ocean carrier’s customer is the underlying shipper of the goods, whose identity is made available in the ENS, and the forwarder is basically helping to arrange for the transportation..

When the freight forwarder is acting as a carrier (NVOCC), the ocean carrier’s transportation contract is not with the underlying shipper of the goods, but with the freight forwarder, who is the shipper of the goods in its contractual relationship with the ocean carrier and is likely to be the consignor and consignee in the ocean carrier’s contract. In these cases, the “underlying” shipper, which is the forwarder’s customer, will not be identified in the ocean carrier’s bill of lading or ENS and is likely not known by the ocean carrier, but instead will be identified in the forwarder’s bill of lading.

for pre-vessel loading cargo risk assessment would be fulfilled by acquiring the identity of the “buyer” and “seller” of the goods being imported into the EU. Our further understanding of the Commission’s current thinking is that, if the buyer and seller information were known, the “dual filing” by freight forwarders of ENSs covering their house bills of lading would not be regarded as necessary. These understandings form the basis for the following comments.¹¹

The WCO SAFE Framework has included ten data elements, including “buyer” and “seller”, as data elements that nations may choose to require *importers* to file before vessel loading for maritime containerized cargo. The overwhelming majority of WCO member governments have not undertaken implementation of such a requirement. The U.S. has established an “importer security filing” (ISF 10) to acquire all ten data elements, but it is a unique and substantial change to the way trade is documented, it involves considerable information technology (IT) systems adaptation and expense by the Customs authorities and traders, and it is more complicated. The U.S. system also identifies the “buyer” and “seller” of the goods being transported as within the direct knowledge of the importer, and therefore identifies the importer as the appropriate party to be required to submit this information.

In the ENS filing system, the EU chose to create a single data filing of data elements included in the WCO SAFE Framework and to impose the ENS filing obligation on the ocean carrier. More recently, as part of the on-going review at the WCO of various elements of the SAFE Framework, the Commission proposed to amend the SAFE Framework so that the ‘import goods declaration’ may be lodged by “the importer or his/her agent *or another responsible party*” -- a proposal apparently designed to accommodate a possible future requirement by the EU to include “buyer” and “seller” (and perhaps other unspecified data elements from the import goods declaration) in the ENS filing and still be consistent with the WCO SAFE Framework.¹²

As discussed below, amending Commission regulations to require the party lodging the ENS to provide “buyer” and “seller” information may be an option, but it would not be consistent with the current SAFE Framework that assigns responsibility for filing these particular data elements to the importer, it is not consistent with current commercial practice

¹¹ We also understand that the Commission is considering mandating usage of HS codes for cargo descriptions in the ENS filing. WSC has previously informed the Commission that the liner shipping industry, under certain understandings, could support a requirement to provide HS codes in ENS filings to the six-digit level.

¹² This proposal to the WCO by the Commission has yet to be publicly explained to traders.

which does not routinely require shippers to inform their transport providers of the identity of the goods' buyer and seller, and it cannot be done without difficulty and without appropriate understanding and planning.

a) *The Importance of Defining the Terms “Buyer” and “Seller”*

As a starting matter, we note the importance of the Commission and Member States agreeing upon and providing a clear definition of the terms “buyer” and “seller” of the goods.¹³ As noted previously, the “consignor” and “consignee” in a transportation contract are not necessarily the same as the “buyer” and “seller” and the parties with legal title to the goods.

b) *The Importance of Excluding FROB and Transshipped Cargo*

If an advance “buyer” and “seller” data filing proposal were to be considered by the Commission and Member States for European import cargo, it would be *essential* to be clear that any such new filing requirement *not* be applied to “freight remaining on board” (FROB) or cargo trans-shipped in EU ports for re-exportation to non-EU destinations.

“Buyer” and “seller” are commercial terms that no nation in the world requires be provided to transportation providers; therefore, carriers will not have such information in the normal course of their doing business. For FROB and trans-shipped cargo, there is no European importer or buyer, and there is no commercial nexus to the EU other than the carrier’s routing of the goods. For example, a shipper of goods from Mexico to Turkey may use a ship that stops in a European Mediterranean port before proceeding to Turkey. Neither the Mexican exporter nor the Turkish importer would have cause to provide additional data on its shipments to an EU Member State Customs authority.¹⁴ For this reason, “buyer” and “seller” of the goods are not appropriate for inclusion in advance cargo information filing systems applicable to FROB or trans-shipped cargo. The WCO SAFE Framework does not envision this, and the Importer Security Filing in the U.S. specifically does not require such data for FROB or transshipped cargoes.¹⁵ Requiring “buyer” and “seller” data for cargoes not being imported into the EU

¹³ For the WCO SAFE Framework definitions, see footnote 3. For the U.S regulations’ definition, see footnote 4.

¹⁴ For goods transshipped in an EU port, the carrier will, in addition to lodging an ENS, also be responsible for lodging a summary declaration for temporary storage. The carrier can make such filings based on the data included in the carrier’s bill of lading and the carrier’s arrival manifest.

¹⁵ For example, a European company shipping goods to Mexico on a vessel that calls at a U.S. port before proceeding to Mexico does not need to provide an Importer Security Filing or “buyer” and “seller” information to U.S. Customs. Nor does such a European company need to provide this

would create commercial and operational chaos, would severely and adversely affect the competitiveness of EU ports as it would cause cargo to be routed away from EU ports, and would create a loss of European jobs as a result.

c) Determining Which Party Should File the Information

If the Commission and Member States decide that the identity of the “buyer” and “seller” of the goods are the two additional cargo data elements from the WCO SAFE Framework that should be required for advance maritime cargo risk assessment, then what would be the most appropriate means to obtain that data? There appear to be basically two choices: require the party with the most direct knowledge of the data to file it (i.e., the importer, as in the WCO SAFE Framework and the U.S. ISF regulations), or require the party filing the ENS to include the data as part of the ENS.

If the Importer Were To File the Buyer and Seller Data

The logic of looking to the importer to file the additional information about its goods is that it is the party with the most direct knowledge of the desired information. “First hand” information is more accurate and reliable. In addition, looking to the importer could allow the Commission and Member States to more easily acquire additional cargo information about the goods that might be of interest for risk assessment purposes should they eventually wish to do so (e.g., to obtain additional optional importer data from the WCO SAFE Framework other than buyer and seller).¹⁶

The challenges of looking to the importer to file this information are the issues that arise: a) from multiple data filings (a filing in addition to the ENS), b) the timing of the submission, and c) the likely confusion by importers about which Customs authority should receive the filing.

First, requiring the importer or its agent to provide the identity of the buyer and seller of the goods in a separate filing to Customs would result in a “dual” filing system, which the

information to the ocean carrier for the carrier to meet its advance reporting requirements under U.S. regulations.

¹⁶ Those other importer data elements from the WCO SAFE Framework are: The exporter, the importer, the consignor, the consignee, the deliver to Party (not to be confused with Notify Party), the manufacturer, the vaning party, the consolidator, the country of origin, and commodity classification or description of the goods.

Commission has informed us is a change the Member States do not want to contemplate implementing at this time.

Next, such an additional, separate importer filing would raise some issues, including some unique challenges due to the current structure of the EU regime for maritime cargo risk assessment, which requires the information to be received and analyzed by the first European port of call, not the European port of discharge (Customs office of presentation). Such issues include:

- Each EU Member State’s information system would need to receive and process filings, not only from the current number of ENS filers, but also from many additional parties (importers or their agents) from locations around the world and to match these filings with the ocean carriers’ ENS filings relating to the particular shipment.
- For a pre-vessel loading risk assessment system to effectively include an importer filing, common data elements will need to be identified that link the new filing with the carrier’s ENS filing. If a “do not load message” (DNL) or other operational message is generated because of the information in the importer filing, the ocean carrier must immediately and directly receive an electronic notification from the appropriate Customs authority that allows the carrier to respond effectively and make sure the cargo does not get loaded. This would seem to mean, at a minimum, that the ocean carrier bill of lading number, its EORI number, and the container number would need to be part of the importer’s advance electronic goods declaration, so that the ocean carrier could be electronically notified by Customs of any DNLs.
- If a new pre-vessel loading importer filing were to be considered for EU imports, the design and structure of the current EU maritime cargo risk assessment regime would require addressing the issues of:
 - a. How would the importer know to which Customs authority to file its data?
 - b. How would the receiving Customs authority know that it has received all the necessary importer filings?
- a. Which Customs Authority? There is no single ENS repository in the EU. The Member State that is the first EU port of call for the arriving vessel is responsible for performing the advance cargo risk assessment. If an importer filing with the additional buyer/seller data is to be received by that Member State which also receives the carrier’s ENS and does the pre-vessel loading cargo risk assessment,

the receiving national Customs authorities will need be able to link the ocean carrier's ENS filing and the importer's second or "dual" filing.

However, the importer may not know to which EU Member State it would need to file the advance buyer and seller information. The Member State where the importer will declare the goods for import may likely not be the Member State where the arriving vessel makes its first port of call in the EU or where the goods are discharged. The importer is concerned about shipping its goods from an origin to a destination, but usually does not know or need to know the itinerary of the ship carrying the goods or which EU port would be the first EU port of call for the vessel carrying its goods. Further, requiring the importer to make a filing with the EU Member State that is the vessel's first EU port of call would also seem to preclude an ocean carrier or its shipper customer from changing the transportation of a container from one vessel to a different vessel unless the importer is contacted and makes either an amendment to its original filing (in cases where the Customs office of first entry stays the same) or makes a new filing (in cases where the Customs office of first entry would change because the vessel's itinerary is different). These complexities for carriers and for importers and for Customs authorities would be substantial and would need to be addressed.¹⁷

- b. *How Would Customs Know When an Importer Filing Should be on File?* The U.S. system requiring the Importer Security Filing (ISF) states that the required importer data "must be provided for each good listed at the six-digit HTSUS number on the lowest bill of lading level". Thus, each bill of lading, including every forwarders' house bill of lading, must have an ISF that covers all the goods covered by that bill of lading. With no house bill of lading ENS filing required in the current EU system, how would the receiving Customs authority know whether all the required importer filings have been made? For example, assume a single forwarder has loaded 20 different importers' cargo into a container with 20 house bills of lading -- How would the appropriate Customs authority know to

¹⁷ We note that the "office of lodgment" functionality, whereby a declarant may lodge an ENS at another Customs office than the Customs office of first entry, is currently only accepted by 12 Member States. It is not immediately evident why that number would be expected to increase in case an "office of lodgment" would, in addition to ENS filings, also be obliged to process, register and forward importer filings to the various Customs offices of first entry on the itineraries of the thousands of vessels that call the EU each year.

look for 20 importer filings? For example, assume three forwarders are co-loading cargo in a container -- How would the appropriate Customs authority know how many importer filings to look for?

There is a clear logic to requiring the importer to be the party to file additional cargo risk assessment data, such as buyer and seller, because it is the party with most direct knowledge of such information. However, establishing a new dual filing system when the Member States reportedly do not support such a system, at least at this time, and the practical problems of an importer knowing to which EU Member State's Customs authority it should file – all would make the concept very challenging if the data is to be filed before vessel loading to the Customs authority that is the vessel's first EU port of call.

An alternative approach for importers' providing Customs authorities more complete cargo information could be to augment the existing pre-vessel loading cargo risk assessment by the Customs authority at the first EU port of call (based on the ENS) with a cargo risk assessment being performed by the Customs authority at the port of discharge (Customs office of presentation) based on information provided by the importer or its agent. This would be a significant alteration to the current approach, but it is included here for the purposes of considering an array of options.

The concept might operate as follows. The Commission has indicated that it wants "buyer" and "seller" data because that will give a more complete picture of the goods and the parties responsible for their movement. These two data elements are a subset of much more complete data that the importer already provides Customs at the office of import when declaring the goods for free circulation. The importer's goods entry data includes most of the WCO SAFE Framework advance cargo data (including buyer and seller), and would provide for more informed risk assessment than either the status quo or from obtaining only the buyer and seller information. The problem is that this import Customs declaration filing is made much later than prior to vessel loading in a foreign port, and may be made to a Customs authority that is neither the first European port of call nor the European discharge port.

Nevertheless, if the Customs authority in the discharge port -- which already will have been informed by the Customs office first entry of any positive risk identified based on the ocean carrier's ENS filing -- could obtain this import Customs declaration information, it would eliminate the need for a *new* filing, and it would provide authorities with much more complete information about cargo shipments for risk assessment than just buyer and seller. This information could be used when the goods are presented and declared for a Customs procedure or, absent this, declared for temporary storage.

The challenges for this approach would be: 1) to get importers or their agents to file the import Customs declaration by the time of (or prior to) vessel arrival, 2) to require the necessary additional data in the Customs declaration to enable the Customs office in the discharge port to link the Customs declaration filing to the ENS filing (e.g., IMO vessel number and “frozen” ETA, the carrier’s master bill of lading number, and the container number), and 3) to enable the Customs authority at the container discharge port to obtain the Customs declaration in a timely manner. These challenges may be so significant that this approach could only be considered as part of the future Automated Import System, so as to allow the sharing of such import Customs declaration information amongst the various EU Member States in a timely manner.¹⁸ While challenging, this approach could be explored further if the Commission and Member States found merit in the idea.

Can the ENS Filing Be Amended to Require Buyer and Seller Data?

If the importer is not to be the party to file “buyer” and “seller” or other additional cargo information, could the ENS filing process be amended to capture these data elements?

No advance cargo manifest or ENS-type filing system currently operated by any nation in global maritime commerce requires the disclosure of the “buyer” and “seller” of the goods in a cargo information filing to be made by a transportation provider.

When the U.S. system was developed, U.S importers felt strongly that the ten additional data elements in the Importer Security Filing contained confidential business information that should not be compelled to be shared with a carrier or forwarder, but instead should be filed by the importer.

Whether shippers to the EU would have a problem providing buyer and seller data to the ENS filer is an issue that only shippers can speak to definitively. In an effort to assess how shippers might regard the issue, however, WSC has undertaken a limited sampling of opinion from various shipper groups and has not identified a significant level of shipper concern with respect to a possible requirement to provide buyer and seller data for submission to the EU Member States in the ENS. WSC can not in any way speak for shipper interests, so we would

¹⁸ This concept of importer filing would also face unique challenges with respect to bulk and break-bulk cargo, where the ENS can be sent up to four hours prior to arrival in the first port of entry. An importer may not have the chance to handle an importer security filing prior arrival or even discharge of the vessel. These challenges would also apply to short sea shipping that has an even shorter ENS filing deadline (two hours prior to arrival).

recommend that the Commission address this question directly with shippers; however, our initial inquiries have indicated that confidentiality may not be a significant obstacle to obtaining this information via ENS filings, so long as the Customs authorities do not release the data publicly. If there are shipper concerns, they may revolve around how such a system would actually affect commerce and the efficient flow and release of their goods more than about the confidentiality of the data. Ultimately, only shippers can provide such information, and their views should be obtained.

Limitations on ENS Filers' Knowledge of Buyer and Seller: If the required ENS data elements were to be amended to require "buyer" and "seller" to be provided in an ENS filing, the ENS filer (whether that is an ocean carrier or another party to whom the ocean carrier has given its consent) would need to file the information based on the information provided by its shipper customer.

Like the cargo description, the carrier filing the ENS (or the party to whom it has given its consent to file) must be entitled to rely in good faith on the shipper's representation. This principle should be confirmed in a legislative basis if the law is to be changed to require "buyer" and "seller" information to be included in the ENS.

Furthermore, the identity of the buyer of the goods may change, as goods are frequently sold during transit. The Commission and Member States would need to clarify: 1) whether an ENS would need to be amended if the buyer of the goods changed after the ENS was filed, and 2) if so, recognize that the carrier filing the ENS (or the party to whom it has given its consent to file) can only amend this data field if so instructed by the shipper and given the identity of the new buyer. This would be an unavoidable limitation of getting the information "second hand" from the ENS filer rather than the importer.

Regulatory Requirement Needed: If the ENS filing system is modified to obtain "buyer" and "seller" information, it would be essential that these two data elements be ***required*** to be included in an ENS (other than for ENSs involving FROB or trans-shipped cargo). Because of the novelty of this approach and its uniqueness in global commerce, we would expect some customer resistance to providing the data. Only if Community law made it mandatory data to be included in an ENS -- with the explicit consequence that an ENS without such data would be rejected and the container consequently may not be loaded onto the vessel destined for the EU -- would there be an assurance of the information being provided for inclusion in pre-vessel loading ENS.

Multiple ENS Filings From Forwarders Would Probably Result: Freight forwarders may not wish to share the "buyer" and "seller" information -- in situations where they have received

such information from their customers -- with ocean carriers. We understand from the forwarder community that this could create situations where the mandatory inclusion of buyer and seller in an ENS filing could cause forwarders to want to file the ENSs instead of the ocean carrier. Under the current Commission regulation, this might be considered a commercial issue for the parties (i.e., the ocean carrier and the forwarder) to address, but it may result in carriers providing consent to such third party filings more frequently than they do today.

Furthermore, if a forwarder cannot be compelled to provide buyer and seller data to the ocean carrier, a co-loading forwarder cannot be compelled to provide buyer and seller data to a “master” forwarder. This would mean that for co-loaded containers, Customs authorities would need to be prepared to accept and process multiple ENS filings from multiple forwarders for a single container, because a co-loaded container will hold the shipments of multiple forwarders. There would be no “single filing” for such co-loaded containers.

What is certain is that ocean carriers would be advised not to consent to a forwarder filing an ENS instead of the carrier unless the Commission and Member States are clear and explicit in the regulation that: 1) the ocean carrier is not responsible for the completeness or accuracy of the forwarder’s ENS filing, and 2) the ocean carrier need only receive a *single* MRN from the competent Customs office acknowledging that an ENS filing has been made with respect to its master bill of lading in order to be in compliance with the regulations. This would be necessary, because the ocean carrier would have no insight into the data being submitted by the forwarder or the number of ENSs (based on the number of shipments and/or the number of forwarders involved) that may need to be filed. Ocean carriers would likely regard the above clarity to be an essential element of any new regulation that included buyer and seller data in an ENS filing.

“Matching” Cargo Descriptions and “Buyers and Sellers” and Multiple ENS Filings Resulting: If the Commission and Member States decide to amend the current regulation and require the identity of the buyer and seller of the goods being transported to be included in the ENS, they must be clear about how this information is to be reported. Specifically, the issue must be addressed about how to report this information when a container contains goods involving multiple buyers and/or sellers, which will frequently occur.¹⁹

There are probably two basic approaches to this issue. The first and simpler approach would be to maintain current business and ENS data formatting procedures and to have a single data field in the ENS with a list of all the cargo descriptions, and another single data field in the

¹⁹ A shipment may involve: a) 1 seller/1 buyer; b) 1 seller/multiple buyers; c) multiple sellers /1 buyer; or, d) multiple sellers/multiple buyers.

ENS with all the buyers and sellers. This approach would also seem to be in conformance with the existing ENS data structure (“Annex 30A”).

We expect, however, that this approach would likely be determined to be unacceptable upon examination, because, unless the Customs authority can accurately link or match a particular cargo description with the particular buyer and seller of those goods, cargo risk assessment needs would likely not be met.²⁰ Accordingly, this White Paper assumes that a different approach would be required: specifically, the paper assumes that the ENS filings would need to match or pair particular cargo descriptions with the particular buyers and sellers of those goods.

This assumption carries significant implications for the business process modifications and IT system modifications that would be necessary to implement such a system -- by those filing ENSs, by shippers, by consignees, by third party service providers that handle bookings for shippers, and by the Customs authorities that will be receiving and analyzing the ENSs.

For example, only some of the currently used data formats²¹ could support an ENS filing with buyer/seller details on a per cargo description level. Although EDI XML allows for this, EDIFACT CUSCAR does not. A majority of Member States currently require EDI XML messages; the remaining Member States require EDIFACT CUSCAR messages. Thus, if the requirement were that the ENS filings would need to match or pair particular cargo descriptions with particular buyers and sellers of those goods, at least those Member States that currently use EDIFACT CUSCAR would need to either change their format and/or undertake extensive re-programming of their Customs systems (as would the third party service providers ocean carriers are currently using to transmit their ENSs to the various national Customs authorities.

In addition to these consequences, our expectation is that this “matching” of particular cargo description with particular buyers and sellers of those goods could result in a substantial expansion in the number of ENS filings (in addition to the anticipated increase in ENS filings by forwarders instead of ocean carriers, as discussed earlier). For example, an ocean carrier, which today may be filing a single ENS for an entire bill of lading (which typically can cover

²⁰ A commodity being sold or purchased by one party may present no particular risk, but if being sold or purchased by another party, it might.

²¹ The two most commonly used electronic data formats used are EDI XML and EDIFACT CUSCAR.

several containers), may change to filing ENSs at the container or at the shipment level, not the bill of lading level.²²

Carriers would need to establish a new data repository of “buyer” and “seller” information in their IT systems. “Buyer” and “seller” data is not information included in the carrier’s booking, manifest or bill of lading IT systems, and will need to be collected in a separate, dedicated data repository. Our understanding is that carriers would likely need to create a manual process for extracting this information from the new “buyer” and “seller” data repository and including it in the ENS.²³ Rather than wait to include all the buyers and sellers (and the associated cargo descriptions) for all shipments in the container into one, single ENS, it could, while still very resource demanding and challenging, from a business process and systems perspective be more efficient to file the buyer and seller and the associated cargo description for each individual shipment once that information has been stored in the repository. This would mean that for containers with cargo from multiple buyers and sellers in the box, there could likely be multiple ENS filings.²⁴ Consequently, while we are informed by the Commission that the Member States do not want to create a “dual filing” system at this time, they should recognize that the evolution from the status quo to a system where ENSs must include buyer and seller data (the objective which this White Paper is trying to analyze) may result in, not a single ENS filing for every container, but the potential for multiple ENS filings for a single container. When multiple buyers and/or sellers are in a container, these

²² There are several reasons for this. A “Do Not Load” message would in that instance only pertain to a single container or a single shipment, not to all the containers or all the shipments covered by the bill of lading. It may also be more efficient to file the expanded ENS data for a particular shipment as it is provided to the carrier, rather than waiting for all the buyer and shipper data for all the shipments in a container to be provided.

²³ This added process may cause carriers to push back their documentation “cut off” times (i.e., the deadline for when the carrier must receive the information from its shipper customer for inclusion in the carrier’s ENS filings).

²⁴ Some examples may help illustrate the range of possibilities in this regard. A carrier may have a contract with an Asian trading company to transport a single container, but there may be many different European buyers of the goods in the container. A shipper of shoes may be selling part of the container of shoes to one retailer and part to another. A single European retailer may have arranged for a shipment of goods from multiple different sellers. A co-loaded container may have goods from four different freight forwarders, each with eight different shippers, each with different buyers and sellers of the goods.

multiple ENS filing may be from a single filer (e.g., the ocean carrier); however, in forwarder controlled, co-loaded shipments, we would expect that there could be multiple filings from multiple forwarders in the event that the carrier has consented that another party file the ENS instead of it.

We encourage the Commission and Member States to analyze and consider the above expected consequences for their Import Control Systems (ICS) and for the efficient flow of trade. We recommend that such analysis and consideration be undertaken with an expanded dialogue with traders, so that all parties could fully consider the issues involved.

Implementation Time Frame: Finally, in the event that the Commission and the Member States, upon having obtained shippers' and other traders' views, were to choose this option of requiring ENS filings to include buyer and seller information, we would strongly encourage the Commission to provide a sufficiently long period -- which in no case should be less than 12 months -- to ocean carriers, third parties (e.g. forwarders), and shippers and importers to arrange for the entry into force of such a new requirement. This no-less-than-twelve month recommendation is based on an assumption that the new functional specifications for all Members States' ICS systems would be available, that all 27 Member States would have sufficient resources for a sufficiently long testing period with carriers and forwarders, and that there would be agreement on a test plan, including test messages that is workable for both Customs authorities and traders. It would also be reasonable -- considering the novelty and uniqueness of this option -- to accompany such a no-less-than-twelve month planning and implementation with a uniform, EU-wide "grace period" pursuant to Commission rules rather than individual, nationally determined "grace periods".

As mentioned earlier, "buyer" and "seller" is not currently data that is provided to, and processed by, the ocean carriers, so they would need to develop, test and implement the necessary changes and amendments to their IT systems and the connectivity with the 27 Member States, who would also need to make adaptations to their ICS systems. This would be a significant effort, requiring the redesign of business processes, and additional investment in IT systems by the ENS filers and Customs. It would be complicated. Our Members are quite apprehensive about the resulting number of ENS filings, the number of MRNs that would be produced, the consequences to their IT systems and to the interchanges between filers and Customs, and the consequences to the efficient flow of European commerce. If our assumption about "matching" cargo descriptions and "buyer/seller" data is correct, we strongly recommend that the Commission, Member States, and traders undertake an open and careful dialogue on this issue because of its significance and importance.

Equally important, because this would be such an unprecedented and novel governmental requirement, ocean carriers' shipper customers – many of which are located outside the EU – would need to be advised of the requirement and, in turn, make their own internal arrangements to enable them to provide the required data to the ocean carrier by the anticipated earlier documentary “cut off” time in advance of the 24 hours before loading ENS Filing deadline to ensure its inclusion in the ENS. Ocean carriers' experiences from the U.S. and Canadian and, most recently, the EU “24 hour rule” are that such informational and educational efforts vis-à-vis shipper communities in the various trading nations of the EU require significant efforts, planning and lead-time.

Further, as noted above, we would expect a requirement to include buyer and seller data in ENS filings to produce a substantial increase in the number of ENS filings that Member States' ICS systems would receive. It would not be a “single” filing system as it is today, where the ocean carrier usually provides a single ENS for a bill of lading or a container. It would be a system where freight forwarders may be given consent more frequently to file, where co-loaded containers would be producing multiple forwarder filings for a single container, and where we would expect the “matching” of cargo description to buyer and seller would likely produce multiple ENS filings for any container holding the cargo of multiple buyers or sellers (which many containers do). Although we cannot predict the magnitude of the data filing increase with certainty, the data volume to be processed by the Member States' ICS systems could easily be many times larger than today's volumes. Certain Member States' ICS systems already appear to be having difficulties handling the current ENS volumes within a reasonable time without impacting carriers' operations.²⁵ Accordingly, if this regulatory change is going to be made, we recommend that the Commission together with Member States undertake stress testing of the capacity and the response times of each Member State system prior agreeing on an implementation date. Otherwise, this could be like opening “Pandora's Box”.

Finally, the Commission should be aware of the fact that the liner shipping industry is facing stressful economic conditions. Resources and budgets for these kinds of changes will be constrained. Similarly, we are aware that Member States' Customs authorities are facing increased budgetary pressures. We respectfully suggest that this kind of change would be far

²⁵ For example, one Member State's ICS system currently limits the number of ENS filings a filer may lodge to 3844 ENSs in a 24 hour period. This limit also applies to any amendments to previously lodged ENSs. This is troubling enough under the current regulations, but would be untenable if the number of ENS filings were to multiply substantially as a result of adding “buyer” and “seller” to ENS filings.

more logical to be considered as part of the-to-be-agreed and defined IT architecture for the implementation of the Modernized Customs Code, rather than implemented as ad hoc, stand alone amendments to the current ENS requirements that only took effect on January 1, 2011. At the very least, it is not unreasonable for traders – and Customs authorities – to request, and obtain, assurances, certainty and predictability that changes and amendments to their current IT systems with the associated resource demands will be an integral part of a long-term systems architecture, developed in furtherance, and support, of a clearly defined cargo security risk assessment strategy.

V. Substitution of “Buyer” and “Seller” for “Consignor” and “Consignee”

Instead of adding “buyer” and “seller” to the currently required data in an ENS filing, the Commission has informed us that consideration has also been given in the Commission’s Customs Policy Group to drop “consignor” and “consignee” from the required ENS data elements and replace them with “buyer” and “seller. Apparently, these considerations are based on an objective to limit the number of changes to the existing ENS filing procedures and IT systems. However, there is no cargo risk assessment logic to this. As noted earlier, the terms are not the same. How would cargo risk assessment be enhanced by dropping from the data included in an ENS filing the requirement to provide the identity of the party causing the transportation of the goods and the party receiving the goods?

There are certainly issues and challenges that would have to be addressed if buyer and seller were added to an ENS filing; however, none of those would be lessened by dropping consignor and consignee, which are readily available terms from the carrier’s transportation contract, or a forwarder’s transportation contract if it were the party filing an ENS. If the Member States’ IT concerns about altering the current ENS filing system are so great that two data fields cannot be added, then the effort to analyze whether additional cargo information should be obtained should be suspended. This “substitution” concept should not be pursued.

VI. “Virtual Dual Filing” or “Mandatory Consent” Concept

Another concept that has been considered by the Commission has been described in various ways, but apparently involves changing current regulations to *require* a carrier to allow a third party to file the ENS. At times this has been referred to as “virtual dual filing” or at times as “mandatory consent” – an obvious oxymoron, but a reference that aptly describes the illogic and contradiction of holding a party (the carrier) legally responsible that a filing be made, and then obligating that party to consent/agree/accept that another party file instead, while the carrier is still responsible that a filing be made.

This tortured concept is a manifestation of the contradictions that inevitably arise from a situation where there is desire to: acquire more advance cargo shipment data than current regulations require, obtain such data from parties that do not possess it in the normal course of their business, and preserve the dogma that all the required and relevant advance cargo data must be provided through a single filing by a single party.

If “mandatory consent” is to be considered as a way to obtain data that a party does not wish to provide to the ocean carrier filer of the ENS, then why would it be logical to “impose” such consent on the ocean carrier? One could just as easily impose consent on the carriers’ customers to provide the data to the carrier for the filing. That approach would also simplify Member States jobs because they would not be confronted with a confusing mix of ocean carrier ENSs and third party ENSs, including multiple third party ENSs for co-loaded containers.

“Mandatory consent” is not an approach that should be pursued.

VII. Conclusion

Addressing the specific issues of *which party* is to be responsible for filing *what additional data* at *what time* and *through which mechanism* raises important issues if the current ENS filing regime for maritime containerized shipments is to be amended.

It is essential that the Commission and Member States clearly identify for traders what additional data elements they need for cargo risk assessment, and when they need them. Once these objectives are clearly established, traders should be invited to work with the Commission to design a system that addresses the challenges and produces the desired results in the most effective and efficient manner.

The continued insistence of retaining a single filing system when no single party has all the data desired continues to create significant obstacles to finding a practical solution. These challenges must not be ignored and the need to be clearly addressed.

This paper is presented to provide the Commission and Member States some preliminary observations regarding the question we understand is being discussed within the Commission about whether the existing cargo risk assessment system for maritime containerized import cargo should be amended. We recognize that the paper is 28 pages long, but it tries to provide decision-makers both within the Commission and Member States with sufficient information to enable a better understanding of the complexities of what would be involved in implementing the concepts under consideration.

This paper expresses no opinion on whether the Commission and the EU Member States should require additional specific information regarding containerized import cargo shipments. That is a decision for the sovereign governments of the EU and the European institutions. Traders have experience operating under the current EU regime, under the U.S. regime with three sets of filings including a ten data element Importer Security Filing before vessel loading, and under national regimes that require no advance shipment data before vessel loading.

What this paper would encourage, however, is that any decision by the Commission and the EU Member States about requiring additional data regarding maritime import shipments be based on the security merits of the specific data's contribution to enhanced cargo risk assessment, and upon a clear and transparent assessment and delineation of information filing responsibilities.

The issues involved in a possible amendment of the current EU maritime cargo risk assessment regime are sufficiently important to all traders, Customs authorities and the continued efficient flow of European commerce, that a fully transparent and open dialogue with all interested members of the trade community is warranted.

The World Shipping Council has drafted this White Paper on the understanding that the Commission's current objective is to retain a "single" filing ENS regime, instead of requiring both ocean carriers and freight forwarders to file ENSs for each of their bills of lading, and that the Commission would like the current ENS filing system to be amended to acquire information about the "buyer" and "seller" of the goods being transported. Although WSC and its Member lines do not advocate this approach to the issue, this White Paper tries to set forth the Council's views on this concept. A quick summary of those views would include the following points:

1. We continue to believe the "single" ENS filing approach is a mistake, and that ENS filings, which rely on bill of lading information, should be made by both ocean carriers and freight forwarders.
2. Customs authorities should obtain information for cargo risk assessment from the party with direct knowledge of the desired information, because it is more likely to be accurate and because intermediary parties cannot be held responsible for the accuracy of second-hand information. Thus, if "buyer" and "seller" data is to be obtained before vessel loading, logically it should be obtained from the importer, as the WSC SAFE Framework and some other jurisdictions have provided. The unique EU system, however, would present significant complexities if importers were expected to file cargo information with Customs authorities prior to vessel loading.

3. Transportation providers do not in the regular course of their business obtain “buyer” and “seller” information from their customers. This data today is not solicited or captured in bill of lading, cargo booking, or ENS information systems. Notwithstanding the above, if the Commission and Member States wish to proceed to require the current ENS filing system to capture “buyer” and “seller” information, it is essential that the following features be included in such a system.
4. The Commission and Member States would need to provide an agreed and clear definition of the terms “buyer” and “seller”.
5. If “buyer” and “seller” data is to be obtained for inclusion in an ENS, the Commission’s regulations must require these two data elements to be included in the ENS for goods to be imported into the EU in order for it to be complete and accepted prior to vessel loading. Unless carriers’ and forwarders’ customers are required by law to provide this information to the party filing the ENS as a condition for the goods to be loaded aboard the vessel bringing them to the EU, it would be unlikely that the proposal could be successfully implemented.
6. The party filing the ENS must be entitled to rely in good faith on the information it is provided by its customer. An ENS filer is not and cannot be a guarantor of the buyer and seller information’s accuracy. An ENS filer cannot know if the identity of the buyer or seller has changed after the ENS is filed.
7. Many containers will have goods of multiple buyers and sellers. We expect that, if “buyer” and “seller” were to be required to be included in ENS filings, the identity of particular buyers and sellers would need to be matched or paired with the particular goods description, rather than a single list of commodity descriptions and single list of buyers and sellers that are not matched. If this is correct, the implications for IT systems and business processes are significant – for both Customs authorities and traders. We expect that a practical way this could be addressed is for multiple ENS filings to be made for the various commodity-buyer/seller pairings, but Member States would need to address any issues, including the expected significant increases in the number of ENS lodged, that this might present to their currently configured ICS systems.
8. An ENS regime requiring “buyer” and “seller” information is likely to cause forwarders to request more often than today that their ocean carriers agree to allow them to file the ENSs, instead of the ocean carrier filing. In this case, the ocean carrier cannot know

whether the ENS filing is complete and must have legislative assurance that it can rely on its receipt from the appropriate Customs authority of a single MRN for a particular container or master bill of lading as sufficient proof that its legal obligation -- that an ENS filing is made -- has been met.

9. Buyer and seller data must NOT be required for FROB or trans-shipped cargoes.
10. The changes necessary to include “buyer” and “seller” in ENS filings would require very substantial changes to commercial practices, as well as IT systems, and would impose significant costs on traders. Further, traders would need adequate time to develop and implement changes to their IT systems and business practices. We recommend 12 months lead time to accommodate such a change, if it is decided upon by the Commission and Member States, starting at the time when the necessary national IT specifications have been made available to traders by all Member States.
11. Without a “dual” filing system requiring both ocean carriers and freight forwarders to file ENS for all of their bills of lading, we do not understand how Customs authorities will know if they have received all the “buyer” and “seller” information for all the shipments concerned, and we believe that they would lack the necessary jurisdiction or enforcement mechanism to obtain it for co-loaded containers.

If the World Shipping Council and its member shipping lines can be of assistance to the Commission and the Member States as these issues are considered, we would be most willing to do so.

