



WORLD SHIPPING COUNCIL  
PARTNERS IN AMERICA'S TRADE

February 18, 2003

U.S. Customs Service  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

**RE: Strawman Proposals for the Collection of Mandatory Advanced Electronic Cargo Information for Commercial Vessels Destined to and Departing from the United States**

The World Shipping Council, a non-profit association of over 40 international ocean carriers, respectfully submits the attached comments in response to the request for comments issued by the United States Customs Service at its January 23, 2003 sea cargo public meeting regarding the development of regulations for the collection of mandatory advanced electronic cargo information in accordance with the Trade Act of 2002.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Koch". The ink is dark and the signature is fluid.

Christopher L. Koch  
President & CEO



**WORLD SHIPPING COUNCIL**  
PARTNERS IN AMERICA'S TRADE

**Comments of the  
World Shipping Council**

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**Before the  
United States Customs Service**

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**In the Matter of:**

Strawman Proposals for the Collection of Mandatory Advanced Electronic  
Cargo Information for Commercial Vessels Destined to and Departing from  
the United States

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**February 18, 2003**

## **I. Introduction**

The World Shipping Council (“the Council” or “we”) submits the following comments in response to the request for comments issued by the United States Customs Service (“Customs”) at its January 23, 2003 sea cargo public meeting regarding the development of regulations for the collection of mandatory advanced electronic cargo information in accordance with the Trade Act of 2002. Under Section 343 (a) of the Trade Act (Public Law 107-210—as amended), the Secretary must promulgate regulations, by October 1, 2003, to provide for the mandatory collection of electronic cargo information by Customs prior to importation into or exportation from the United States. The Act, among other things, also requires that Customs consult with the trade, consider competitive relationships, balance the impact on the flow of commerce against the impact on cargo safety and security, and impose the requirements to provide the cargo information on the party (e.g. importer, exporter, carrier, broker) most likely to have direct knowledge of the cargo information.

The Council appreciates the opportunity to provide pre-rulemaking comments to Customs on the development of appropriate regulations for complying with the Trade Act. The Council, a non-profit association of over forty international ocean carriers, was established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s members include the full spectrum of ocean common carriers, from large global operators to trade-specific niche carriers, offering container, roll-on roll-off, car carrier and other international transportation services. They carry more than 90% of the United States’ imports and exports transported by the international liner shipping industry, or roughly \$500 billion worth of American foreign commerce per year.

International liner shipping provides regular, scheduled services connecting U.S. exporters and importers with virtually every country in the world. Liner shipping vessels make more than 22,000 calls at ports in the United States each year or more than 60 vessel calls a day—and, consequently file tens of thousands of import and export cargo manifests each year to Customs and other U.S. government agencies.

The members of the World Shipping Council, therefore, have a direct and substantial interest in this proceeding.

## **II. Strawman Proposal for Vessels Destined to the United States**

### **A. General Comments**

First, the Customs Service indicated at its public meeting that it intends to use the recently implemented “24 hour rule”<sup>1</sup> to meet its Trade Act requirements for imported cargo. The

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<sup>1</sup> The 24 Hour Rule took effect on December 2, 2002 as published in the Federal Register notice entitled, “Presentation of Vessel Cargo Declaration to Customs Before Cargo is Laden Aboard Vessel at Foreign Port for Transport to the United States” on October 31, 2002 (67 Fed. Reg. 66318).

Council supports the application of the 24-hour rule to meet the requirements of the Trade Act for inbound cargo.

Second, the Customs Service stated in its inbound strawman that its goal is to achieve “electronic paperless transmission utilizing the vessel automated manifest system by all ocean carriers and non-vessel operating common carriers (NVOCCs), *or other knowledgeable parties registered or licensed by the Federal Maritime Commission...*”. At the sea cargo public meeting on January 23, 2003, the Council commented on the inclusion of “other knowledgeable parties” in the strawman and received clarification from Customs Service officials that “other knowledgeable parties” did not indicate that entities other than the vessel carrier and NVOCC would be responsible for filing automated manifest information in AMS. We request that Customs confirm that this is correct.

Third, the Council strongly urges Customs to recognize that a carrier’s manifest includes information from the carrier’s bills of lading, which are contracts for the transportation of goods and which contain only information that is relevant to or required by the transportation contract. Carrier manifests should not be utilized to collect information that is unrelated to that transportation contract. If Customs determines that it needs information for security purposes that is not part of the carrier’s transportation documentation, the Council recommends that Customs collect that information from the party most likely to have direct knowledge of that information.

In its inbound strawman, the Customs Service also indicated that it intends to implement programming changes to its Automated Manifest System (AMS). The Council’s comments on each of these programming changes are provided below.

#### **B. Requiring date and time of lading as a mandatory field in AMS**

The strawman proposal provides that, in order to more effectively enforce the requirement that vessel carriers and NVOCCs transmit their cargo declarations 24 hours prior to lading in the foreign port, Customs is considering the collection of the date and time of lading from the AMS filer.

Under current filing procedures, upon receipt of an AMS filer’s cargo declaration, Customs transmits a date/time stamped “receipt of bills” message to the AMS manifest filing party. AMS filers are then expected to wait 24 hours after receipt of this message before commencing loading.

We are concerned about this aspect of the strawman proposal for several reasons. First, we are not aware of any problems to date that necessitate such a requirement. If a carrier were to commence loading without waiting 24 hours after transmitting its cargo declaration via AMS, and it received a “Do Not Load” message after the container is loaded, the vessel would incur substantial costs, including: 1) stevedoring and additional port expenses in having to unload not only the “held” container, but all the other loaded containers that would have been loaded on top of that container on the vessel, 2) additional costs arising from delays to the vessel’s schedule,

and 3) the expense and lost revenue that would result from the certain denial of permission to unlade the container in the U.S. and the resultant use of that container slot on the ship for a return trip to origin and then again back to the U.S. We are not aware of any facts that indicate that these incentives are inadequate to ensure adequate enforcement of the rule.

Second, requiring the AMS filing carrier to provide the date/time of lading would not be as simple as amending the list of required data elements in the rule. A carrier cannot predict with certainty in advance exactly when a particular container will be loaded aboard the vessel. Vessel loading can span many hours and more than one calendar day. The date/time of load for one container may be different from another container. Any estimate of actual date/time of load would be imprecise since vessel loading is an ongoing process, not an event.

The only accurate way to collect meaningful date/time of lading information, even if it could be collected, would be on a per container basis. Carriers have no existing procedures for collecting and transmitting such data. Furthermore, it would not only be very costly and time-consuming to do this, but it would provide no apparent security enhancement to the supply chain.

Finally, we note that, while this would impose a significant burden on ocean carriers that does not have significant, apparent benefits, it would impose an even greater burden on NVOCCs who are unlikely to know the precise time a container is loaded aboard a vessel.

**Recommendation:** The Council recognizes Customs' interest in the timeliness of filing cargo declarations under the 24-hour rule. With that said, we do not support inclusion of this new data field. We would also note that, if Customs wants to spot check compliance, one simple way to do it would be to check the records of a ship's log to see when it departed from a foreign port and compare that to when the cargo declaration information was filed. This should indicate if there is substantial noncompliance with the rule.

### **C. Developing an "end of manifest" function in which AMS filing parties would be required to indicate when they have completed their manifest transmissions**

In its strawman proposal, the Customs Service stated that it is considering requiring transmission of an "end of manifest" message to indicate that all of the bills of lading for a given AMS filer have been transmitted. At the Trade Act meeting on January 23, 2003, Customs affirmed that such a function, if implemented, would **not** be utilized to limit AMS filers from transmitting authorized manifest amendments and corrections. This is very important. It is essential that Customs not limit AMS filing carriers' ability to file manifest amendments that occur as a result of normal business operations.

Standard practice today is that AMS filing carriers file cargo declarations in batches and in many cases file more than one batch per port of lading. The filing of multiple batches of information into AMS for the same port of lading is very important because it enables the AMS filer to transmit those parts of the cargo declaration that are complete and correct, and enables AMS filers to limit the demands on their filing systems. Furthermore, as Customs is aware, the

requirements of the 24 hour rule mandate the filing of separate batches of bills for each foreign port of lading. Given this practice, would the AMS filer be expected to file an end of manifest message upon filing all bills from each foreign port of lading?

In addition, we note that Customs has not, either in the “strawman” documents or in the public meeting on the Trade Act, clearly articulated a need or purpose of this additional function.

**Recommendation:** In light of the fact that the agency has stated at the Trade Act public meeting that amendments would continued to be allowed, and in light of the fact that there is no apparent or explained reason for this feature, we do not support adding this function.

**D. Allowing the B04 record (reference identifier) to be utilized in vessel AMS to allow an NVOCC to report a master bill of a carrier.**

The Council supports Customs’ efforts to implement this programming change.

**E. Transition Strategy and Vessel Paperless Manifest Test**

The stated intent of the Customs Service strawman is to utilize the existing Vessel Paperless Manifest Test (VPMT), a current test program in which most of the Council’s Members participate, to include the transmission of empty containers under the Empty Container Module. We support Customs’ use of the VPMT to provide for the electronic transmission of empty container manifests, and we intend to file comments in response to the general notice on that subject, which was published in the Federal Register on December 17, 2002 (67 Fed. Reg. 77318).

Customs also stated in its strawman that it would utilize a three-month phase in period to provide carriers and NVOCCs that are not participants in the VPMT with the opportunity to begin the automation process. At the conclusion of the three-month period, those entities that are not current participants of the VPMT program will then begin their six-month test period. Early in the implementation of the 24-hour rule, some carriers mistakenly believed they were part of the VPMT because they were “automated” in AMS. Given the apparent confusion regarding the VPMT and given that a carrier or NVOCC could be automated in AMS and not be part of the VPMT, we encourage Customs to provide greater clarity on the differences between automated AMS filers and AMS VPMT participants and publish detailed guidelines for vessels and NVOCCs that are not currently participants in the VPMT, which detail the additional requirements for enrolling in the VPMT.

Finally, the strawman states that carriers that are currently automated will have 30 days to automate at all U.S. direct ports of arrival. Does this mean “automate **and** be paperless” in all U.S. direct ports of discharge, or does it simply mean file electronic manifests for all U.S. direct ports of discharge. We encourage Customs to provide greater clarity on the meaning of this proposed requirement, and also to provide further information about the implications for Customs’ own processes and procedures in a complete VPMT environment.

### **III. Strawman Proposal for Commercial Vessels Departing the United States**

The Customs Service has indicated that it intends to use the Automated Export System (AES) Vessel Transportation Module (VTM) as the system for receiving export cargo information prior to export from the United States. Currently, under the VTM, ocean carriers transmit available booking data to Customs 72 hours in advance of departure, transmit a receipt of booking message when the cargo is received, transmit a vessel departure message, and then transmit the complete export manifest (in the same format as the inbound cargo declaration) to Customs within ten days post departure via AES. Booking data received less than 72 hours before departure is transmitted by the carrier and accepted by Customs as received. Shipper Export Declarations (SEDs) are currently also filed for most, but not all, export shipments.

#### **A. Advance Booking Data and SED's Versus Advanced Outbound Manifests**

Customs Service officials stated in the Trade Act sea cargo public meeting that the agency relies heavily on the booking data as a foundation for screening and targeting outbound cargo. Under the current VTM process, carriers, by providing advanced booking data to Customs, assist Customs in completing its targeting early and can therefore submit the final ocean manifest information up to ten days post-departure. The Customs strawman appears to envision carriers' continued filing of advanced booking data *in addition to* the filing of advanced manifest information 24 hours before departure.

We believe that this export strawman approach should be reconsidered for several reasons.

Unlike the Automated Manifest System used for inbound cargo, which has no advance booking data filing and which depends on carriers' manifests for all the relevant pre-screening information, the Automated Export System has the current capability of enabling Customs to not only receive and examine advance booking information from the carriers, but also the Shipper Export Declarations (SEDs), which are filed by the U.S. Principal Party in Interest (the entity that derives the primary economic benefit from the export of the cargo). Thus, AES could allow Customs to utilize the data from SEDs, in conjunction with advance booking data, for export cargo security screening.

The strawman proposal does not address why requiring the advance filing of the booking data and the SEDs would not provide Customs with all the information it needs without having to require the advance filing of a completed vessel manifest 24 hours before departure. The government's outbound cargo documentation system is different from the inbound system that depends solely on AMS. The strawman process would double carriers' advance cargo data filing requirements for export cargo (advance booking information and advance manifest filing) compared to import cargo, when export cargo is, according to Customs, lower risk cargo than import cargo, and when the value of double filing is not apparent.

Section 343 (a) (2) of the Trade Act of 2002 states: "The information required by the regulations promulgated pursuant to paragraph (1) under the parameters set forth in paragraph (3) shall be such information as the Secretary determines to be reasonably necessary to ensure

aviation, maritime, and surface transportation safety and security pursuant to those laws enforced and administered by the Customs Service.” This provision, therefore, allows the Customs Service to use its discretion in developing the requirements for what information is to be transmitted electronically before exportation. Requiring carriers to file their cargo declaration information before vessel loading was, for reasons based in large part on Customs’ AMS system, determined to be the necessary way to obtain advance information on inbound cargo. That does not mean the same solution should automatically be applied to outbound cargo, especially when one recognizes that Customs’ information systems for outbound cargo allow other options to be considered.

Transmission by carriers of their advance booking data, especially when combined with filings of SEDs, would seem to provide all the data Customs could need for security screening in advance of export. We do not see what value would be added by also requiring the filing of complete vessel manifest data, when Customs would already have the advance booking and the SED information.

If Customs is concerned that present regulations allow booking data to be filed less than 24 hours before vessel departure, then consideration could be given to requiring that booking data cannot be submitted less than 24 hours before vessel departure.

Alternatively, Customs could require a carrier to file a complete manifest 24 hours before vessel loading or departure, as is required for inbound cargo, but in that case, it would appear that also filing advance booking information would be unnecessary and should be eliminated.

Finally, we urge Customs to clearly define the use of and the required time of filing for SED information. SEDs are clearly an essential part of the security screening process. As the Trade Act states: “the requirement to provide particular information should be imposed on the party most likely to have direct knowledge of the information.”<sup>2</sup> For outbound cargo information, the SED clearly fulfills that role. The State Department Authorization Act<sup>3</sup> also mandates the use of AES by exporters for all export shipments, independent of value. Instead of relying on the carriers’ filings for precise export cargo information, Customs should expedite a rulemaking procedure to implement section 1404(b) of that Act.

## **B. Timing**

The strawman proposal refers to filing export manifest information “24 hours prior to departure”. At the sea cargo public meeting, however, Customs officials indicated that Customs might change this to 24 hours prior to *loading*. The Council would like to note that the terms of the Trade Act state that “cargo shall be considered properly documented if the shipper submits to the vessel carrier or its agent a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator, but in no circumstances later than 24 hours *prior to departure* of the vessel.”<sup>4</sup> There are differences between the time of loading and the

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<sup>2</sup> Section 343(a)(3)(B).

<sup>3</sup> Public Law 107-228, Section 1404(b).

<sup>4</sup> 19 U.S.C. 1431a(b)(2) (emphasis added).

time of departure. In light of the statutory language, we do not see why a different standard of vessel “loading” would be of value, and we do see how it could create some confusion. A vessel “loading” standard also would create the problems described in Part II.B. above, whereas vessel departure times are clear.

Finally, we wish to note that the carrier will be required to establish commercial “cut-off” times earlier than the 24 hours in order to be able to handle and file the information 24 hours in advance. Accordingly, clarity is important on this point.

### **C. NVOCCs**

Unlike Customs 24-hour rule regulation for inbound cargo, the Customs Service’s strawman proposal does not address mandatory advance electronic filing obligations for NVOCCs. We are not aware of, nor has Customs identified, any reasons why the principles that guided including NVOCCs in the inbound documentation requirements should not apply equally to the outbound documentation requirements. As a matter of principle and well as policy, it is essential that whatever export documentation regime is developed must not treat cargo that is exported by an NVOCC to less information or security scrutiny than if the cargo is exported by an ocean carrier. Furthermore, just as with inbound cargo, ocean carriers have no interest in being responsible for providing NVOCC house-level bill of lading information for exports. Having said that, and aware of the difficulties that both ocean carriers and NVOCCs are experiencing under the inbound 24 hour rule, we believe that Customs should develop and disseminate a clear proposal that addresses the issue of NVOCC information filing obligations.

### **D. Export Exemptions**

Similar to the inbound manifest exemptions for breakbulk cargos, we strongly encourage Customs to develop an exemption process for outbound breakbulk cargos. To that end, we recommend that, for carriers that are already exempted for import breakbulk cargoes, Customs should streamline the outbound exemption application process so that any carrier already authorized a permanent import breakbulk exemption would be granted an expedited export breakbulk exemption for the vessels and cargoes listed on the import exemption. Customs could then provide guidance on any additional information it would require to complete the processing of the outbound breakbulk exemption requests.

### **E. Empty Containers**

Whatever outbound vessel filing requirements are developed, it is very important that empty container manifests not be required before vessel loading. As stated in the Council’s comments on the proposed inbound 24-hour rule, it is impossible for a carrier to accurately know the empty containers that will be loaded aboard a vessel 24 hours in advance of sailing. Nor is there a comparable security concern for empty containers. This issue is even more important for U.S. export trades where empty containers are far more prevalent. Whatever final approach is taken,

it should allow carriers to file a list of empty containers loaded aboard the vessel after sailing from the last U.S. load port.

#### **IV. Conclusion**

The Council supports the Customs Service's efforts to improve the security of cargo that is imported to and exported from the United States by issuing regulations providing for the electronic transmission of import and export cargo manifest information. The Council and its Members have worked closely with Customs during the implementation of the 24 hour rule, and believe that this rule, in conjunction with the Container Security Initiative (CSI) and Customs Trade Partnership Against Terrorism (C-TPAT), will enhance Customs' ability to screen, target and identify high-risk cargos bound for the U.S., and most importantly, to take action to prevent those high-risk cargoes from ever reaching the United States.

We recognize and appreciate that the strawman proposals were designed to foster thinking and preliminary comments regarding how best to support the twin goals of enhanced supply chain security and the efficient flow of commerce. We appreciate Customs' commitment to working with the trade to develop meaningful security solutions. We look forward to continuing to work closely with Customs, in the development of appropriate, secure and trade-facilitating Trade Act regulations.