WORLD SHIPPING COUNCIL

PARTNERS IN TRADE

Remarks of

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Regarding

"Impact of Risk Management Processes on Global Trade"

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The European Commission's 8 January 2013 Communication to the European Parliament, the Council, and the European Economic and Social Committee notes that, for risk management of the movement of goods through international supply chains, "one needs to know 'who is moving what, to whom from where.'" The Communication further notes that the cargo information needed "includes details of the real parties behind transactions and goods movements and an adequate description of the goods", and that the current cargo information provided to EU Customs authorities "does not meet minimum requirements".

The World Shipping Council (WSC) is a trade association of international maritime liner shipping companies, and my remarks today are limited to the aspects of this issue as it affects containerized maritime commerce. WSC has sought to provide assistance and the views of the international ocean carrier industry to the Commission and EU Member States, the World Customs Organization, and the United States government on these issues since the September

11th terrorist attacks caused governments to enhance supply chain security. WSC appreciates the invitation to offer some thoughts today as you consider how to address this challenge.

WSC recommends that the EU approach this matter by addressing the following questions:

1. First, specifically define *what* additional data the Commission and the Member States want the Customs authorities to receive;

2. Second, understand *who* is the party that has this information;

3. Third, identify *how* this information is to be obtained from that party; and

4. Fourth, define *when* this information must be provided.

In August 2011, WSC provided the Commission and the Member States with a 28 page White Paper, addressing "Possible Revisions to the Required Data Filing Components of the EU Maritime Containerized Cargo Risk Assessment System". I again commend this White Paper to your attention, because it is relevant to your deliberations, and provides analysis in greater detail than is feasible in my remarks today. It can be accessed at: http://www.worldshipping.org/industry-issues/security/cargo-and-the-supply-chain/WSC_White_Paper_on_Possible_Revision_of_EU_cargo_data_filing_requirements.pdf

Traders can provide Customs authorities with the information that they have about cargo shipments. They cannot provide data that they do not have. They cannot be responsible for the accuracy of data that they do not know in their own course of business.

Traders in the U.S. provide U.S. Customs and Border Protection (CBP) more advance cargo shipment data for risk assessment than the EU Customs authorities currently receive. Ocean carriers provide more data to CBP than to EU Customs authorities. NVOCC/freight forwarders provide CBP more data than they are currently required to provide EU Customs authorities. And importers provide CBP more advance cargo shipment data than they are currently required to provide EU Customs authorities. The U.S. system requires traders to incur costs and follow processes that don't exist in other countries, but they can comply with the U.S. requirements without disrupting or creating undue delays or great inefficiencies in commerce.

The U.S. first decided exactly what data it wanted, and then in cooperation with industry it developed regulations and systems requiring each segment of the industry that possessed the data to file that data: ocean carriers file data they have and know in their normal course of business; forwarders/NVOCCs file data that they have and know in their normal course of business; and importers file data they have and know in their normal course of business. That

produces three different data streams that are then linked and analyzed in a single, national supply chain security targeting center.

We recognize that a redesign of the current EU supply chain risk assessment system will encounter difficulties that the U.S. does not face, including: 1) 27 different Member State Customs authorities and 27 different national IT systems, rather than a single, unified EU data filing system, and 2) differing interests and responsibilities amongst Member States which are the first EU port of call of an arriving ship, or which are the discharge port, or which are the country of import. The challenges involved in changing the current EU system are evident and significant. These challenges should not, however, inspire consideration of political "short cuts" in order to avoid the difficulties of devising a system that obtains additional advance supply chain information from the parties that have it. There are no easy short cuts. Allow me to note a couple of examples.

For example, Regulation 1875 was designed to collect cargo manifest data via ENS filings only from ocean carriers, when it was evident that forwarder/NVOCC cargo manifest data would be equally relevant --- but it was adopted in this form because of a decision not to require "dual filings", that is, not to require forwarders to file the information they have about arriving cargo shipments in parallel to the ocean carrier filing. Thus, there can be no surprise that ENS filings from ocean carriers provide the identity of the ocean carriers' consignees and consignors, and not the consignees and consignors of forwarders.

For example, at times the suggestion has been made that it might be helpful to have freight forwarders' consignor or consignee information, or maybe instead the identity of the "buyer" and "seller" of the goods; but then the discussion often tries to avoid dealing with the reality that, if you want that data, logically you should get it from the party that knows it and has it – the importer for "buyer" and "seller" data, and the forwarder for house bill of lading consignor and consignee data. Instead, the suggestion is made that one can simplify all of this by requiring the "buyer" and "seller" information to be part of the "single filing" ENS system from the ocean carrier – who doesn't have it as a normal part of its business.

Further, we have even seen suggestions that EU regulations should not ask for consignor and consignee data in the ocean carrier's ENS, but instead should seek "buyer" and "seller" data in order to avoid additional data fields to be completed and processed. It would be bizarre if relevant data was not required because the current EU IT systems are incapable of handling more data fields. IT systems should *support* the advance cargo security strategy, not *be* the strategy.

For example, in discussions about what would happen if subsequent Commission regulations required ENSs to include information that the ocean carrier does not have, the

suggestions at times have been even stranger, where a concept of "mandatory consent" has been mentioned by Commission officials, i.e., that an ocean carrier would be *compelled* to give its consent that a third party files the ENS instead of the carrier, but with the carrier still being responsible that an accurate filing be made within the prescribed timeframe. The concept tortures the meaning of the word "consent", which means something voluntarily given, not mandated.

For example, ocean carriers have "container status messages" or "CSM data" in their equipment tracking systems. Do you want it? OLAF says yes, and has prepared a draft EU regulation requiring ocean carriers to submit this data to a central EU system operated by OLAF. TAXUD has repeatedly confirmed to us that it does not have a strong interest in CSM data, but we understand that position may now be under review. The views of Member States Customs authorities appear, at best, unclear to us.

This is frustrating to industry.

It is not clear what EU policy makers believe is needed for a reform of the EU's supply chain risk assessment system. I suppose that is why we are all here at this high level seminar in Dublin.

One should start by first deciding ***what*** data you need; then industry can help you determine how to get it most efficiently. It is illogical to try to design a regime governing *who* should file data before it has been decided *what* the data is. If you want data about a cargo shipment that is in the possession of multiple parties, the most logical and effective way to obtain it is to design your systems to accept data submissions from those multiple parties. Avoiding that reality is to require traders to perform unnatural acts, with unnecessary costs and complexities. Avoiding that reality will only produce less accurate and reliable data.

Allow me to offer another example of the current lack of clarity: The January 25 Presidency UCC compromise proposal appears to provide (Article 114):

1. That there be "an entry summary declaration" (ENS), which we interpret to mean that there is to be one ENS covering the goods, not dual or multiple filings. (Article 114.1)

2. That the ENS "shall be lodged by *the carrier*". This assignment of responsibility is ambiguous. As we have explained numerous times, including in our August 2011 White Paper, with the majority of the maritime cargo containers entering Europe, there are two carriers involved: an ocean carrier that assumes responsibility to move the goods for a freight forwarder pursuant to a contract of carriage with that forwarder to whom it has issued a bill of lading, and the forwarder that also acts as a

carrier, and assumes responsibility to transport the goods for its shipper customer pursuant to a separate contract with that shipper to whom the forwarder issues its "house" bill of lading. (Article 114.3a) The definition of "carrier" in maritime (and air) traffic in the Presidency UCC compromise proposal does not recognize this distinction, because it appears to assume – incorrectly - that for a given shipment there will only be one party "who has concluded a contract and issued a bill of lading or air waybill for the actual carriage of the goods" into the EU (Article 5.34c (b)). If the intent of the Code is to make the ocean carrier the party responsible for the ENS filing, the Code should specify that it is the ocean carrier.

3. That while the obligation to file the ENS is on the "carrier" (whoever that may be), the ENS may be lodged *instead* by: a) the importer, b) the consignee (in the case of a forwarder controlled shipment it is unclear who this party would be – the party identified in the ocean carrier's bill of lading or the party identified in the forwarder's bill of lading), c) any "other person in whose name or on whose behalf the carrier acts" – which is very unclear and confusing, or d) "any person who is able to present the goods in question or have them presented at the customs office of entry", which is presumably the importer or its agent. (Article 114.3a (a) – (c))

   Whether the "carrier's" knowledge and consent is necessary for such a third party filing of the ENS is not stated. Whether the "carrier" remains responsible for the accuracy, completeness and timeliness of the filing if a third party files is not stated. What criteria the third party must meet in order to be an accepted data filing party with the Member States is not stated. Further, the protocols governing how these tens of thousands of potential alternative ENS filers would interface with the various EU Customs authorities is not even recognized as an issue.

4. That the data elements that will be required to be included in the ENS will be defined in a subsequent regulation, meaning that, if the information desired is not within the knowledge of the "carrier" as part of its normal business operation, there will be unresolved issues about how that information would be obtained, and about whether it would be accurate if it is not provided by the party with direct knowledge of its veracity.

We would hope that the co-legislators would be clear about who is required to do what. This is presently not clear. Furthermore, depending on the final list of data elements that may be determined in a subsequent regulation, an approach that requires the carrier to file all information would seem likely to violate the principle embedded in the WCO SAFE Framework

that the party with direct knowledge of the relevant information should be the party required to file that information.[1]

The Commission's January 8 Communication states that the current ENS cargo information provided to EU Customs authorities "does not meet minimum requirements". With all due respect, this is not really accurate. It may be that the current information provided does not meet what the minimum requirements *should be*, but it does meet the legal requirements as they exist. Furthermore, neither the January 8 Communication from the Commission nor the January 25 President's compromise proposal for the Union Customs Code clearly and specifically defines what the "minimum requirements" should be for cargo brought into the EU.

Traders can operate under the WCO SAFE Framework and the U.S. system and their much more extensive advance cargo data filing requirements. Traders can operate under the current EU system and its requirements. Traders can operate in trades where no advance cargo information is required. What traders can't do is support short cuts that are designed to avoid dealing with political challenges and/or operational realities and that place unreasonable or unworkable demands on traders.

We all have a common interest in creating a system where it is clear: 1) who is to file what data, with whom, when; 2) that the data received by Customs be accurate and reliable; and 3) the relevant parties understand and agree how that system is to function.

We understand that there are challenges. The ocean carrier industry wants you to succeed. It wants the cargo it carries to be legal and safe. It wants to support government efforts to identify cargo that is not legal or safe and to prosecute those that violate the law.

The ocean carrier industry would very much like to see a single, unified EU system for filing relevant trade data, rather than filing with each EU Member State. Such a system would facilitate answers to many of the practical concerns that may arise from changes to the current system. However, even if a single, unified EU system is not a viable concept at the present time, the ocean carrier industry will try to help you achieve your objectives. I can only recommend that this task will be much easier if first you decide what information you need,

[1] On February 18, 2013, WSC, together with seven other industry associations representing carriers and forwarders and their customers issued a statement to the European Parliament and the Council urging them to agree to devise an advance cargo risk assessment strategy that, in conformance with the WCO's SAFE Framework, provides for submissions of advance cargo data by multiple parties who, as part of their ordinary business processes, have the various individual data elements needed for a proper risk assessment and, further, that those submissions can be done within realistic and reasonable timelines and filing mechanisms.

and second, accept the fact that there will be significant challenges if you require a trading party to file data that it doesn't have in its normal course of business.

The Issue of Additional Data for Cargo Risk Assessment

Whatever the ultimate result of your deliberations may be, it would seem reasonably likely that requiring more cargo shipment data from more parties will be considered. Although neither the January Commission Communication nor the January 25 Presidency UCC compromise proposal provides specific recommendations about what that additional data should be, there are some commonly discussed possibilities that I will try to briefly comment upon.

A. Cargo Description

While we understand that there is a desire to obtain HS codes instead of plain language cargo descriptions, the Commission Communication does not specify what this means. If it means that a six digit HS Code is needed in ENS filings, that can be accomplished. The regulations should simply require the ENS to include a six digit HS Code. WSC and its Member lines have for several years advocated the establishment of such a requirement, and we believe it would not be difficult for the industry to implement it – provided, that EU law be amended to explicitly require it.

If "more detailed cargo descriptions" means that an eight or ten digit HS Code is needed, we do not believe that this can be accomplished via an ENS filing. We believe the only parties that could submit such information are the importers.[2]

B. Identity of Consignors and Consignees from Forwarders' Bills of Lading

If you are considering requiring the pre-vessel loading disclosure of the identity of the consignor and consignee from forwarders' house bills of lading, then the issue is how to obtain that information, as the freight forwarders are the only parties that are in a position to provide such information on a consistent, reliable basis. While there may be some times when forwarders may be willing to provide this data to their ocean carrier, competitive forces between forwarders and ocean carriers will in many cases cause forwarders to be unwilling to share their customer data with the ocean carrier.

[2] Limiting the inclusion of HS codes to the sixth digit in the ENS was also the preferred option of the European Commission and most of the Member States that, together with industry, participated in a 2007 Customs working group on this topic. ("Report of the Customs 2007 Working Group on the use of the Harmonised System code in the summary declarations", dated August 20, 2007 (document TAXUD/2007/1614)).

To reliably and consistently obtain information about consignors and consignees from forwarders' house bills of lading, forwarders should be required to file their own ENSs to supplement ocean carriers' ENS. Forwarders can do this. They do so today in various non-EU trades.

Regarding the additional number of ENS filers that might be expected from such "dual" ocean carrier and forwarder ENS filings, U.S. Customs has advised us that, in U.S. trades, 924 forwarder/NVOCCs[3] are filing advance cargo manifests with CBP. As forwarders control more cargo in EU trades than U.S. trades, once could expect that a larger number of forwarders would be covered under an EU filing requirement.

We understand that some Member States have expressed concerns about a system that calls for "dual filing" of ENSs. To the extent such concerns are over the number of filers, we note that other governments, such as the U.S. and Canada, have regimes that accept such forwarder filings, in addition to ocean carrier filings.

At the same time, the U.S. had a much easier situation to address when it required forwarder/NVOCCs to file their advance manifest data under the U.S. "24 hour rule". Forwarder/NVOCCs were already clearly defined and regulated parties under U.S. law, both by U.S. Customs and by the U.S. Federal Maritime Commission (FMC). Ocean carriers are required by U.S. law before contracting with forwarder/NVOCCs to check to make sure the NVOCC is on the FMC's list of bonded NVOCCs with tariffs published under FMC regulations. Regulations exist distinguishing between when a forwarder is acting as a "forwarder" or agent of the shipper, and when a forwarder is acting as a carrier issuing a house bill of lading. Forwarder/NVOCCs were already required to file cargo manifests/declaration with U.S. Customs before the 24 hour rule. Forwarder licensing and bonding requirements already existed; resident agents were required for forwarders/NVOCCs not domiciled in the U.S. In short, effective government enforcement capabilities were already in place vis-à-vis forwarder/NVOCC filings – an important point, because an effective enforcement system is needed to ensure that filers provide accurate and timely data.

EU Customs authorities have long-standing enforcement jurisdiction and mechanisms over ocean carrier data submissions. An EU regime requiring forwarder ENS filings would need to address these kinds of issues, so that: 1) a Chinese forwarder, for example, would know what it would need to do and what the requirements would be to establish EDI connections with the various EU national Customs authorities if it was expected to file ENSs; 2) an ocean

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[3] Under U.S. law, freight forwarders that issue ocean bills of lading to their customers are defined as "non-vessel operating common carriers" and are regulated by U.S. Customs and by the U.S. Federal Maritime Commission.

carrier would know what kind of MRN or other information it would need to receive directly from Customs in order to ensure that it was permissible to load a container that involved a forwarder shipment ; and 3) EU Customs authorities can be confident that they have effective enforcement authority to ensure consistent and accurate filings from forwarders around the world. The data is either accurate, or it is unreliable and of dubious value.

A "short cut" that has been discussed at times in the past has been the idea that the EU could continue to insist upon a "single" ENS filing regime, yet require forwarders' house bill consignor and consignee data in that ENS. We do not recommend such a "short cut" for many reasons. First, many forwarders will regard their customer information as confidential business information that they are unwilling to share with the ocean carrier. Second, if the response to this issue is that the ocean carrier would then need to allow the forwarder to file the ENS, a host of questions arise, including: 1) whether an ocean carrier is required to give its consent; 2) what legal responsibility does the ocean carrier have for the timeliness, completeness and accuracy of the ENS; and 3) how the Customs authority receiving the forwarder's ENS would communicate electronically to the ocean carrier transporting the container. Further, this "short cut" would still need to address the various issues discussed in the previous paragraph regarding what forwarders would need to do to establish EDI connections for ENS filings, and regarding the establishment of an effective enforcement regime to regulate such forwarder filings. In short, this kind of "short cut" is not simple and would not avoid the realities of a "dual filing" system.

C. "Buyer" and "Seller" of the Goods and Other Importer Data

The WCO SAFE Framework anticipates that nations may wish to obtain additional advance containerized cargo shipment data that is beyond the data in ocean carriers' and forwarders' bills of lading, and lists 10 data elements that governments may wish to require of importers prior to vessel loading. "Buyer" and "seller" of the goods are two of those data elements. In alignment with this approach, the U.S. decided that the data from ocean carrier and forwarder/NVOCC bills of lading was insufficient for its needs, and requires *importers* to file the following ten data elements in a pre-vessel loading, advance "Import Security Filing" or "ISF":

1. Manufacturer (or supplier) name and address
2. Seller of the goods (or owner) name and address
3. Buyer of the goods (or owner) name and address
4. Ship-to name and address
5. Container stuffing location
6. Consolidator (stuffer) name and address
7. Importer of record number/foreign trade zone applicant identification number
8. Consignee number(s)

9. Country of origin
10. Commodity Harmonized Tariff Schedule number at the 10 digit level.

The U.S. is the only trading nation that has instituted such a requirement. What is important, however, is the recognition by the U.S. and by the WCO SAFE Framework that these data elements, including "buyer" and "seller" of the goods, should be submitted by importers, not ocean carriers or forwarders/NVOCCs, if they are to be submitted. And, as the U.S. decided, if you are going to require importers to file pre-vessel loading cargo shipment data, then limiting the importer data to "buyer" and "seller" would appear to be sub-optimal, at best.

We have been unable, however, to envision how one can design an effective system to require importers to file supply chain data *prior to vessel l*oading in the current EU regime of 27 Member States, when the importer may not even know in what EU port its cargo is going be discharged, let alone what the ship's first EU port of call might be.[4] A single, unified EU data filing regime could facilitate a system like the U.S. uses, but that does not appear to be a politically viable option at present.

If you do not want to consider requiring importers to provide advance cargo shipment information prior to vessel loading, we urge you not to think that there is an easy "short cut" that might enable you to get this "buyer" and "seller" information from the "carrier" in its ENS filing. Nevertheless, because this idea has been discussed repeatedly, I would like to briefly address it.[5]

If you consider this approach, which we do not recommend, there should be no illusion that it would be easy for traders or for Customs administrations, or that there would be only a single ENS filing for a container of import cargo. There are likely to be many times more ENS filings than the number received today. Further, we believe that there are a number of issues that would have to be clearly addressed for the implementation of such a concept, including the following.[6]

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[4] Our August 2011 White Paper discusses how a system might be designed for importers lodging supply chain security data *upon discharge,* but such a system would represent its own set of challenges, including how the importer would be able to lodge required information to Customs in the actual port of discharge.

[5] We addressed the issue of whether buyer and seller information could be obtained in a single ENS in some detail in our August 2011 White Paper (*see* pages 17-24). This concept would raise significant issues. We encourage consideration of the issues we discussed in that paper, and we would encourage an open, detailed and careful dialogue with traders about this idea if it is to be considered.

[6] The ensuing discussion pertains to deep sea containerized shipments only. However, if a similar requirement were also to be applied to short sea containerized shipments, it would be essential that

1. **The Importance of Excluding FROB and Transshipped Cargo:** Very large quantities of foreign-to-foreign containerized shipments pass through EU ports, either as freight remaining on board the vessel (FROB) or as containers transshipped from one vessel to another without ever leaving the EU transshipment port. It would be completely impractical to expect the identity of the "buyers" and "sellers" of such goods to be provided to EU Customs authorities, and such cargo would have to be excluded from any EU requirement.[7]

2. **Regulatory Requirement Needed:** If the ENS filing system were modified to obtain "buyer" and "seller" information for EU import cargo, 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 customer resistance to providing the data. Only if EU law made it mandatory that such data 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.

3. **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 the shipper. Like the cargo description, the carrier filing the ENS must be entitled to rely in good faith on a shipper's representation. The shipper may have strong reasons, however, for keeping the identity of the buyer and/or seller confidential. This could affect the accuracy of the information if it is to be obtained via an ENS. Furthermore, the identity of the buyer of the goods may change, as goods may be 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

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such a requirement also be applied to other modes of transport. Otherwise, short sea maritime traffic would be significantly disadvantaged competitively and commercially, resulting in cargo being diverted to land modes of transport -- undermining the Commission's stated modal shift objectives.

[7] This also illustrates that it would be incorrect to assume that an approach regarding ENS filings could simply be applied *mutatis mutandis* to EXS filings. Similar to the Commission Communication, however, such EXS filings are not discussed here. It should also be noted that the U.S. "ISF filing" does not require such information to be provided for FROB and trans-shipped cargo.

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.

4. **Proliferation of Filers**: Some shippers might not object to providing their ocean carrier with the identity of the buyer and seller of the goods being transported, but we cannot speak for them. There will be situations, however, where a shipper would not want to share this information with an ocean carrier or a forwarder.

   We understand from the forwarder community that the mandatory inclusion of the identity of the "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, meaning many hundreds of additional parties would be filing ENSs, with many of the same issues discussed earlier.

   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.

   Furthermore, one must recognize that there will be situations where cargo shippers will regard the identity of the "buyer" and "seller" of the goods as confidential business information that they would not want to share with *either* the carrier *or* the forwarder. In such cases, carriers could be requested to give consent to importers to file the ENS, meaning even more additional parties filing ENSs. How would such situations be handled?

   If such a filing system were to envision and allow parties other than ocean carriers to file ENSs, it would again be necessary to be clear about the ocean carrier's responsibilities, including whether the ocean carrier would be required to know that all the appropriate ENSs had been filed?

5. Practical Issues Regarding the Advance Filing of Buyer and Seller Data

If you were to require the advance filing of the identity of the buyer and the seller of the goods in an ENS, it would seem necessary for the ENS to match the particular package and 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 formats[8] 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 -- and such a pairing would seem necessary from a risk assessment perspective -- 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, because a system where ENSs must include buyer and seller data may result in a movement away from the currently typical "one bill of lading – one ENS" filing approach to, not a single ENS filing for every container, but to multiple ENS filings for a single container. When multiple buyers and/or sellers are in a container, these multiple ENS filing may be from a single filer; however, we would expect that there could also be multiple filings from multiple parties.

D. More Detailed Information from Ocean Carriers' Operating Systems

The issue of what EU entity or entities have responsibility for what cargo shipment risk assessment function is an issue which has arisen in a very related context for ocean carriers. Ocean carriers' operating systems contain "container status messages" or "CSMs" which are

[8] The two most commonly used electronic data formats used are EDI XML and EDIFACT CUSCAR.

electronic messages, usually received from port terminal operators, that indicate when a container has been received or discharged from a particular facility or undergone some other handling event that has produced an electronic status message for the carrier's equipment management system. Our previous discussions with TAXUD have not identified an interest by TAXUD in obtaining these CSMs for advance cargo risk assessment purposes, although we understand that this position may now be undergoing review. Nor have most national Customs authorities articulated an interest in having the CSMs filed with them. A different Commission Directorate-General, OLAF, however, has informed us that it intends to propose to the Council and the Parliament a new EU regulation that would require ocean carriers to file their CSMs with a central EU repository run by OLAF. This information would be used in EU anti-fraud enforcement efforts. We understand that such a draft Regulation has recently been in Commission inter-service consultations.

WSC and its member companies have worked with OLAF representatives to identify the issues that would be involved in such a system. It may be operationally feasible to undertake such a task. It raises in the industry's mind, however, the recurring question of whether the EU is organizing its efforts in an optimal and integrated manner for the receipt, analysis and action on advance cargo shipment information for risk assessment purposes. The expected OLAF initiative has the great advantage to the ocean carrier industry of offering a single EU filing point of interface for data filing, rather than 27 interfaces with their own individual technical and functional specifications and data formats. For this system to operate effectively, we would expect that the information sharing and cooperation between OLAF and the Member States would have to be significant.

On the other hand, it also seems to represent a new, additional compartmentalization of enforcement responsibilities within the EU which confuses and results in different filing processes and procedures, adding new costs, but not a clear or unified EU cargo risk assessment strategy, to European supply chains. The different layers of detail about arriving cargo shipments discussed above would seem to have direct relevance to EU authorities regardless of whether the task is cargo security risk assessment for terrorism risk, for anti-fraud risk, or for other law enforcement purposes, including sanctions and dual use compliance.

Would CSMs provided by ocean carriers to OLAF be used for cargo security risk assessment, and if so, by whom? Would such CSMs be used by national Customs authorities for drug interdiction or other national law enforcement purposes? If the 27 Member States would use the CSMs submitted to OLAF, then would a single EU wide data filing system for ENS and EXS and other advance cargo shipment information be a way to address the various concerns arising under the current supply chain risk assessment regime?

The 8 January Communication from the Commission notes that there is a collective failure to effectively use multiple information sources and exchange data both at national and EU level. The current fragmentation of responsibilities for information filing responsibilities and for what government entity is to perform what specific risk assessment function with respect to the information provided can only exacerbate this problem. The 8 January Communication notes "the need for much greater convergence in the use of the information, data sources, tools and methods used by customs to pinpoint risks and analyse commercial supply chain movements. Distinctions, e.g., between risk management to protect citizens from security and safety risks and more general anti-fraud concerns including goods smuggling, seem counterproductive and inefficient." (page 11)

We recognize the potential advantages of the OLAF approach of seeking a single EU data filing system for relevant shipment risk information that could be used in common by all EU Member States. We recognize that national Customs authorities in the EU want to maintain their national competence on decisions regarding the entry of goods into their country. We recognize the desire of TAXUD to forge a common approach to supply chain risk assessment across the 27 Member States.

What all parties – including carriers, forwarders, importers, exporters, and Customs authorities – need, however, is a practical and efficient system to accomplish these objectives that does not unduly burden European commerce. As you consider these questions, the World Shipping Council and its member companies are prepared to continue to do what we can to be as candid and as constructive as possible.

Conclusion

My remarks today are not intended to oppose change, but to identify ocean carriers' perspective about the issues that must be addressed if changes are to be made.

Traders understand that the decision regarding what data needs to be filed in order to undertake the EU's advance supply chain security risk assessment is a matter for EU legislation. The industry will try to be as supportive as it can in helping you accomplish your goals. We do recommend, however, that you consider two basic propositions.

The first is that data should be obtained from the person with the most direct, first-hand knowledge of the information and its veracity. This makes the most business sense, as regulations should avoid requiring a business to obtain and possess information that is outside its normal business needs and which it cannot vouch for. This also makes good sense from a

supply chain security risk assessment perspective, because the further the data filer is from the source of the information, the less useful, less accurate and less reliable the information will be.

The second is that there should be no illusions that there are easy "short cuts" that allow you to avoid addressing these issues. Failure to recognize and address the issues before changes to the system are decided would only to lead to many difficulties for traders and for Customs authorities later.

The preference of most traders would probably be the creation of a single unified EU data filing system to which carriers, forwarders and shippers could submit required data, regardless of the first port of call, the port of discharge, or the import country of destination. We also recognize that this is not currently a viable option.

For as long as the current structure and alignment of Customs responsibilities exists, it would seem that the most viable of the various options to obtain more advance cargo shipment data that have been discussed would be to establish a "dual filing" regime of ocean carrier ENS filings, complemented by a requirement that forwarders submit ENS filings, which would provide the identity of the forwarders' consignors and consignees for all EU import shipments.

If the co-legislators decide to consider this approach, we recommend that the legislation also address the questions that will arise of: 1) Do the ENS data filing requirements for forwarders apply to FROB and trans-shipped cargo; 2) What requirements will forwarders wishing to file their ENS directly with Customs need to meet to establish their EDI linkages; and 3) What information will the ocean carrier need from Customs about the forwarders' ENS filing in order to proceed with loading and transporting that cargo shipment to the EU? Other countries that have "dual filing" systems have addressed these questions satisfactorily, and the EU should do the same if it chooses this course.

Further, as to the issue of improving cargo descriptions, mandatory six digit HS codes on the ENS filings would be feasible.

I was requested to be forthright in my remarks to you today. I have tried to be so, and hope that these observations may be helpful. I also wish to reconfirm that the ocean carriers serving Europe's import and export commerce remain fully committed to continue to work with you in a cooperative manner in support of your achieving your goal of more secure EU cargo supply chains.

Thank you for your kind consideration.

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