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Supply & Demand Chain Executive

Solutions-based Intelligence for Supply Chain ROI

Accuracy or Else

by [Jim Giermanski](#)
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Customs program now penalizes importers and carriers for inaccurate information about cargo identification



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There are many laws on the books, but changes to Customs and Border Protection (CBP) programs due to the Safe Port Act of 2006, the National Defense Authorization Act (NDAA) for Fiscal Year 2012, and numerous worldwide customs efforts stimulated by the Kyoto Convention Information and Communication Technologies (ICT) Guidelines, and the U.S.'s own International Trade Data System have resulted in the streamlining of supply chain security practices encapsulated in CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) program.

Filing practices required by the Automated Commercial Environment (ACE) system, through the Automated Broker Interface (ABI) and other customs electronic systems, such as the Automated Manifest System (AMS), the Automated Export System (AES) and the Automated Commercial System (ACS), are only as good as the accuracy of the information obtained and entered into the systems.

For the last decade or so—or since 9/11—all of these laws and programs have focused on one single element without which these programs fail. That single element is accurate and verified knowledge of the contents of the shipping containers or trailers moving through the supply chain. This fundamental element, however, is the most difficult to control.

For instance, it is common knowledge among those who work in the field that trailer or container contents coming into the United States across the southern border are identified on a "hearsay" basis. That is, the U.S. Customs broker files data provided by a third party. In Mexico, because the container or trailer is already sealed when the Mexican carrier picks it up, motor carriers and U.S. Customs brokers must take the word of the Mexican shipper as to the cargo identity and quantity. Additionally, U.S. authorities may know very little about the Mexican manufacturer or carrier. CBP consequently has little or no evidence of what is actually in the trailer or container.

Even with the use of the ACE system and the e-manifest used on the southern border, CBP only knows what the container is “said to contain.” The level of what is known about the cargo coming from Mexico through U.S. ports of entry can best be explained by the actual words of a major U.S. Customs broker in Laredo, Texas. I asked, “How do you know that what is said to be in the conveyance is, in fact, in the conveyance?” His answer was: “We don’t. It is all in good faith.”

Add to that the border’s trans-carriage problem, which is the dropping of northbound containers or trailers at unsecured “drop lots” or “pensiones” located on the Mexican side of the border for days or weeks prior to a Mexican customs broker releasing them for entry into the United States. The cargo is easily accessible for manipulation.

Like port-of-entry truck crossings in the United States, vessel carriers also take the word of the shipper, motor carrier or rail carrier as to the contents of containers or trailers, which the vessel carriers then file with CBP. Vessel carriers, like border motor carriers, are merely reporting what the container is “said to contain,” an expression banned from use by CBP reporting practices.

So what is the fix to this fundamental vulnerability? For vessel carriers, the solution appears to be making the shipper, motor carrier or mail carrier the responsible parties for cargo identification through the adoption of the new Rotterdam Rules. In September 2009, the United States became a signatory to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (informally known as the Rotterdam Rules). When ratified by the U.S., the Rotterdam Rules would replace the 1936 Carriage of Goods by Sea Act (COGSA), as well as other rules. COGSA’s “tackle-to-tackle” mode (the period of time in which the goods laden into and discharged from the vessel are the responsibility of the vessel carrier) disappears under the Rotterdam Rules.

According to the UN General Assembly, the Rotterdam Rules are a “uniform and modern global legal regime governing the rights and obligations of stakeholders in the maritime transport industry under a single contract for door-to-door carriage.” Thus, when ratified, the Rotterdam Rules would make the vessel carrier liable for content on a single door-to-door bill of lading and responsible for cargo accuracy from stuffing the container at origin to destination.

There is also a new vessel-focused CBP program called 10+2 that contains the Importer Security Filing (ISF) rule, which became effective July 9, 2013. The rule allows CBP to begin issuing liquidated damages claims of \$5,000 against importers and carriers for each inaccurate, incomplete or late ISF transmission. CBP may also withhold the release or transfer of the cargo, or even unlade the merchandise. Importers and maritime cargo carriers must submit additional cargo data prior to lading goods on board vessels destined for the United States.

Specifically, importers must report 10 data elements on each ISF, including information that identifies the manufacturer, supplier, seller, buyer, consignee, country of origin, tariff

classification number, where the goods were stuffed into the container, who stuffed the goods and the party responsible for compliance with applicable import requirements. Importers themselves are now legally responsible for the accuracy and timeliness of their ISF filings, regardless of shipper error, or whether a customs broker or other intermediary does the actual filing.

Given these changes, the only method to comply with the rules on cargo identification is to adopt a chain-of-custody process that functions as a virtual criminal chain of custody applicable to the global supply chain. It begins with the identification of the vetted and authorized agent of the shipper who personally verifies the content and quantity of the cargo, personally arms the container security device, and personally seals the container. From then on, that container is monitored for its movement, access and internal environment, depending on the shipper's needs, all the way to its destination where another trusted agent opens and verifies the cargo.

In effect, a chain-of-custody control system can limit the liability for importers and carriers under the new ISF filing obligations, and provide both benefits and solutions, which include:

- Origin-to-destination visibility
- Faster movement through U.S. ports
- The solution of transshipment vulnerabilities
- The solution of U.S. inbound and outbound vulnerabilities and risks
- The solution of supply chain counterfeit vulnerabilities and risks
- Intelligence mapping for law enforcement and CBP
- The reduction and elimination of cargo fraud, and the reduction of money-laundering and counterfeit-product risks.

This system serves to provide accuracy of cargo data, and visibility and knowledge of container location and integrity, while improving the user's bottom line. It is available today in the United States and soon in China. Why has the private sector not used it?

Independent reports and studies by Stanford University, A.T. Kearny, BearingPoint, and the Congressional Budget Office have all shown that efficiency, visibility and speed through ports of entry produce revenue and reduce costs. The electronic chain-of-custody system provides those benefits. However, to date, only the Department of Defense employs this electronic system. It is time for the private sector to recognize the benefits of its use!

Dr. James R. Giermanski is the chairman of Powers Global Holdings, Inc. and president of Powers International, LLC, an international transportation security company. His recent book is entitled Global Supply Chain Security (Scarecrow Press 2012). He was also the director of transportation and logistics studies at the Center for the Study of Western Hemispheric Trade at Texas A&M International University, and is co-inventor of a patent connected to transport container security.

