
“The Practical Realities of Implementing the New Regulations from a Shipowners Perspective.”

By Mr Llew Russell, Chief Executive Officer, Shipping Australia Limited

Introduction

I have been requested to address the following issues under this broad heading.

- Assessing the current status of the implementation process and the need for further refinements before full implementation
- The role of shipping agents and regulatory agencies in port security and implementation
- Reducing risk in the supply chain from the shipowners perspective

I am sure all delegates are now well aware of the International Ship and Port Facility Security (ISPS) Code which was agreed at a diplomatic conference convened by the International Maritime Organisation (IMO) in December 2002 and the hope was that the objective of global standardisation could be achieved through this process. The jury remains out on deciding whether that objective will be achieved on 1 July this year but there are disturbing signs that not only is international standardisation going to be difficult but national consistency in Australia will be a serious problem.

The Australian Maritime Transport Security Act, 2003 incorporates the preventative measures (Part A of the Code being mandatory and Part B of the Code being recommendatory) but such measures go beyond those set out in ISPS Code including:

- New screening provisions
- Establishment of security zones in ports, including around moving vessels
- Use of new terms such as “Maritime Industry Participants”
- Establishment of a demerit point system and the use of injunctions in certain situations
- High penalty levels given the incorporation of the criminal code into the legislation

Whilst there could well be valid reasons for incorporating these and other differentiating provisions in the legislation, they do not assist in achieving as much standardisation globally as possible and therefore threaten the IMO objective as well as the objective of strong counter terrorism measures consistent with trade facilitation.

Current Status of the Implementation Process

The legislation came into effect at the end of last year and was followed shortly thereafter by the first tranche of regulations. Consultations with industry have just been held on the second tranche of the regulations (which have now been implemented) and, I understand, there will
be a third tranche. The Department of Transport and Regional Services (DOTARS) has requested that port and port facility security plans be submitted by 1 March this year but given the lateness of the publication of the details in regulation, there has certainly been a significant challenge for ports and port facilities to meet that request.

There has also been mention of passing on the increased cost of security as most links in the through transport chain have to bear increased costs. For example, the OECD Maritime Transport Committee (Safety and Maritime Transport: Risk Factors and Economic Impact, 2003) estimated that the initial cost burden on ship operators (worldwide) be at least US$1.3 billion and US$730 million per year thereafter and the bulk of ship-related cost is related to management and staff training and security related equipment expenditure. It will be recalled that the ISPS Code sets out requirements for ships security plans, ship security officers, training of ships crews in terms of implementing the plan, ship alert systems to be installed, Automatic Identification Systems (AIS), the prominent display of IMO numbers on vessels, a continuous synopsis record of the history of the ship to be kept on board along with the ship security record and the International Ship Security Certificate. However, it is a valid point that the OECD Report made was that there are also many benefits arising as a result of these new security arrangements. It was also mentioned by the Australian Department of Foreign Affairs and Trade in a paper submitted to the Secure Trade in the APEC Region (STAR) Conference in February last year “the costs of implementing counter-terrorism measures should be viewed as an investment that, by reducing the threat of terrorism, will reduce risk premiums and a bias against longer term, productivity raising activities, that uncertainty and risk create”.

That paper also referred to estimates indicating that if the United States had to carry 10% more in inventories and paid 20% more for commercial insurance premiums as a result of the increased terrorism threat, the additional costs would be in the order of US$37.5 billion (UBS Warburg 2001) which would be more than the whole of the forecast benefits of the Uruguay round of trade liberalisation.

There still remains enormous responsibility on the shoulders of all those developing the security measures to ensure that they do not have trade inhibiting effects as a result of unwarranted costs and/or creating inefficiencies in the functioning of the through transport chain, eg. as the result of delayed cargo delivery or receipt.

One of the early concerns identified was the arrival of a compliant ship that has called at a non compliant port in the previous ten port calls (and the likelihood of that is quite high) and equally worrying is the last ten port calls may be compliant but some of the containers on board may have been transhipped from non compliant ports to those compliant ports. This later point emphasises the necessity of increasing the integrity of the through transport chain.

Shipping Australia firmly believes that the costs at Risk Level 1, at least should rest with individual parties such as ports, port facilities including stevedoring, ships and so on and be passed down the chain via normal commercial pricing channels. At Level 2, the increased requirement on ports, for example, to “detect and deter” in terms of sea approaches raises resource and practicality issues. At Risk Level 3, it is expected that measures that will be taken will be outside the capability anyway of the other participants in the chain and the enforcement agencies will, in effect, take over.

Eventually many of these increased security costs will flow through the system but there was an interesting report in September last year by a Professor at Stamford University’s Graduate School of Business. Professor Dr Hau Lee having studied high-tech shipments travelling from
Malaysia through Singapore to Seattle, concluded that tighter security measures could achieve net savings of $400-$500 per container arising from;

- A reduction in administrative costs as the result of electronic track and trace systems
- Containers were subjected to a lower level of inspection at Seattle thus facilitating timely and predictable delivery and
- Greater visibility of the containers cut down the possibility of theft and loss.

Dr Lee concluded that whilst the savings would be distributed amongst various supply chain partners such as port operators and carriers, the bulk of the saving would go to the shipper. Whilst this research deals with the incidence of cost distribution, one of the significant questions to be discussed is what level of risk is acceptable. I mentioned before about non-compliant ships or ports and I would urge the Registered Security Organisation, DOTARS, to take this approach in seeking to deal with any particular instance of non compliance.

In this slide, I illustrate the tension that arises between what is considered to be an acceptable risk and the cost of trade facilitation trade offs or implications of dealing with that risk. What we need are realistic assessments of the likelihood of relevant risk events occurring in Australia.

In quadrant 1, for example, high risk has been identified but, in fact, at low cost and a low threat to trade facilitation. These are unlikely to be acceptable security measures. In comparison quadrant 2 has equally identified high risk but the security measures introduced are of high cost and have resulted in a high threat to trade facilitation which is also likely to be unacceptable.

Quadrant 3 could be acceptable as a low risk has been identified and the measures employed to deal with it are a low threat to trade and at low cost. Quadrant 4 is possibly the worst approach of all where a low risk has been identified but high cost security measures have been implemented along with a significant threat to trade facilitation. Perhaps the ideal is in the middle and by working smarter rather than by harder we may be able to achieve our preventative measures in a way that does not impose a significant cost burden to the industry and therefore the community and that does not pose a serious threat to trade facilitation certainly at the low to moderate risk levels. Naturally, raising the risk level by necessity raises the severity of the measures needed to counter it and this why the risk assessment process within a national risk assessed context is so important. The views of the marine insurance industry would also be of interest in this context.

Role of Shipping Agents and Regulatory Agencies

In my view, shipping agents have been a vital link in the through transport chain that has not been adequately considered by the IMO. It is, fact, shipping agents will be at the forefront of ensuring that the ISPS Code measures are implemented in a practical way on a day to day basis. It is important that shipping agents are adequately trained in the following;

- The requirements of the ISPS Code both mandatory and recommendatory, to ensure that Masters of vessels visiting Australian shores are fully informed of the other measures outlined previously in my address, i.e. what Australia has implemented in addition to the ISPS Code requirements and any port/port facility requirements that may not be applied generally in other parts of the world.
- Pre-receival reporting requirements.
Ships need to have knowledge of all the contact numbers for the DOTARS security operational centre, the port and port facilities security officers etc.

The likely audit activity and possible boarding by enforcement officers such as those from Customs and so forth.

The Department is to be commended for arranging information seminars for Ships Agents around Australia, that, I understand will commence next month. Another issue that Ships Masters need to be aware of, is of course, the security level at which the port or port facility is operating particularly if that is at variance with the security level at which the ship is operating.

Another area of concern that has arisen is the introduction of new health and safety rules in particular in NSW, that requires everyone entering a terminal or facility to have been inducted by the watching of a safety video and answering some questions and anyone else entering the facility must be accompanied by an inducted person. Security has been used as one reason to introduce these type of arrangements but again a common sense approach should be adopted which will ensure that measures capable of practical implementation will be applied. Identification documents are another serious problem for the shipping agent and ship’s crew when there are different requirements for different facilities. It is important that we work towards a nationally consistent regime, if at all possible or at least a port wide system that enables capture of information on those entering secure port facilities and possibly exiting other port facilities within the overall security area of the port. This, in turn, would require a database possibly operated by the Port Authority.

New rules have recently been introduced in Australia regarding pre-arrival crew and passenger reporting. In December 2002, the US Department of State issued a notice of proposed rule which would have the effect of eliminating the current crew list visa. Submissions were sought and the World Shipping Council, for example, along with the American Chamber of Shipping urged authorities to adhere to the ILO Convention on Seafarers Identity documents which replaces ILO Convention 108 which dates back to 1958. Under the new convention, all 1.2 million seafarers worldwide are to be provided with a fingerprint based international identity document.

This should allay the concerns of some that foreign crews pose a significant security threat in Australia. Since 1 November last year crews have been required to carry passports in addition to their normal crew identity documents.

Whilst it is important, to know the true identity of crew (and passengers) visiting Australia, it is also important to ensure that they have access to the necessary facilities on their relatively short stay in Australian ports and perhaps this means that Stella Maris and the Mission for Seamen will have to establish facilities within the security areas of regulated ports.

Reducing Risk in the Supply Chain

Most delegates would be well aware of the requirements of US Customs for all containerised cargo being shipped to or transiting the United States to be reported 24 hours prior to loading at the foreign port (ie. in Australia) which was implemented on 2 February last year and Canada has stated that it will follow suit next month. As of 4 March this year the US Bureau of Customs and Border Protection required that bulk and breakbulk shipping also submit a cargo manifest electronically 24 hours before arrival at the first US port and post an International Carrier Bond.
Fairly extensive information is sort in the report to US Customs and shipping lines have required this information from effected exporters four working days prior to the relevant vessels arrival at the loading port in Australia. It is worth pointing out that in the event that if a carrier fails to provide the required inbound declaration data within the time required, it may, among other things, be assessed civil penalty, denied permission to unload cargo for which information was not provided on time, and/or denied permission to unload any cargo from the vessel in which the cargo is moving. If this occurs as the result to shippers failing to provide the information required by the rule, or not providing it in time, the shipper will be liable to reimburse the carrier for any such penalty and all costs incurred by the carrier as a result of the denial of permission to unload cargo. Exporters in Australia are to be commended for the way they have changed their procedures to meet these significant requirements for information reporting and to date, fortunately there have been no major problems.

The integrity of the through container chain remains an important issue (as it is not covered by the ISPS Code) and in September last year a white paper was issued jointly by the World Shipping Council, the National Industrial Transportation League and International National Retailers Association in the US which focused exclusively on the issue of in-transit security for marine containers and it was argued that the required use of ISO Standard container seals throughout the supply chain could be implemented within a year and achieve an additional measure of security on top of existing programs such as the C-TPAT and CSI initiatives. The paper was highly sceptical of the idea of installing sensors inside containers to detect anomalies that could indicate intrusion by a terrorist or weapon of mass destruction. It said that was unclear what would need to be “sensed” by such units and that it could be disabled by a determined individual. Instead, the paper suggested that sensors be limited to non-intrusive scanning machines deployed at sea ports both in foreign countries and the US. “In summary, the industry believes that container intrusion detection may be an appropriate objective to explore but will require considerable analysis in order to address legitimate and complicated issues.” (In-Transit Containers Security Enhancement, September 9, 2003).

The World Customs Organisation (WCO) has also been active in a Taskforce established to examine ways and means of enhancing the “Security and Facilitation of International Trade Supply Chain”. The Taskforce reported to the WCO Council which met in June last year and the overall concept is a perceived need to enhance the possibility of risk assessment and customs control by the exporting state, rather than the country of import.

A provisional list of 27 data elements which Customs authorities needed to identify high risk goods had been produced and endorsed by the WCO Council. Another working group within WCO has been developing a policy paper suggesting guidelines for Customs administrations in close liaison with industry in respect of introducing a procedure for acquiring cargo information prior to shipment. This information could include identification of the relevant data elements to be provided electronically, predetermination of security risk such as the identification of the “authorised traders” and “recognised transport operators”, as well as “authorised supply chains” and the guidelines envisaged customs control over consignment movement from the exporters premises through to clearance for home use in import. This will require the development of common control and risk management standards.

Here in Australia it is vitally important that we have as much national standardisation as possible and that trade is facilitated rather than inhibited. This in turn, puts a great responsibility on border agencies such as Customs, Immigration, the Australian Quarantine
and Inspection Service and the Australia Maritime Safety Authority to provide a barrier against terrorism which does not undermine this objective. We have accepted the new Customs pre-receival reporting requirements as set out in the recently adopted new regulations in Australia.

Conclusion

As you would gather from this brief overview we are dealing with a lot of uncertainty and concerns as we approach the implementation date of 1 July, 2004. Certainly members of Shipping Australia are strongly in support of enhanced security measures that will counter, as far as practicable, the threat of terrorism and the position adopted in Australia of seeking outcomes based on preventative measures, is, in our view, the right approach.

There is a requirement for co-ordination and close co-operation between the Port Corporation and individual port facility plans. One of our concerns, I am sure shared by others, is a non complying port facility but I am also sure that this would be short-term.

What is going to be more important in the months and years ahead is that we engender a culture of alertness and that we do, in fact, practice our security plans and put them to the test via regular audits. As time goes by without incident, the threat may actually increase as we all become more complacent.

We hear the view of our Registered Security Organisation that they will not hesitate to fine corporations and people who do not fully embrace the new security regime and actively work to implement the agreed anti-terrorist measures. On the other hand, I hope that within a framework of agreed practical outcomes, well resourced enforcement agencies funded as part of Community Service Obligations, and a high level of consultation/co-ordination between Government and industry that our national interests will be fully protected.