



COUNTERPROLIFERATION GOOD PRACTICE FOR FREIGHT FORWARDERS

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INTRODUCTION

By the nature of its business, the transport sector is well placed to counter the proliferation of weapons of mass destruction (WMD): its potential for contributing to global counterproliferation efforts should not be underestimated. All parties in the international supply chain have a responsibility to ensure that a transaction complies with the numerous requirements captured under the general description of ‘export controls’ or ‘strategic trade management’. This may include the fulfilment of export, transit and trans-shipment licence requirements; and end-use, dual-use and restricted-party screening. Complying with export control regulations can be particularly complex for the transport sector since transactions involve multiple jurisdictions and, in some situations, have extraterritorial implications.

The SIPRI Good Practice Guides on the transport sector as counterproliferation partner have been developed to support partnerships between the transport sector and government authorities to counter proliferation and to implement proliferation-related United Nations Security Council resolutions. The series identifies and explores various aspects of the transport sector as a counterproliferation partner, with the aim of strengthening the sector’s contribution in this area.

This guide pays specific attention to the vital role of freight forwarders in counterproliferation efforts. Its underlying principles apply to other transport sector actors as well. It highlights how freight forwarders face increased compliance risk exposure and how the adoption of counterproliferation-related compliance activities can reduce both the non-compliance and proliferation risks.

WHAT IS A FREIGHT FORWARDER?

Globalization—particularly changes to foreign investment, global supply chains and production sharing practices—has fundamentally reshaped the multilateral trading system. Increased flows of freight have been integral to related changes in the economic system at the global, regional and local levels. These changes are not just quantitative, with more freight in circulation, but also structural and operational. It is important to understand not just the nature, origins and destinations of freight movements, but how this

SERIES SUMMARY

● The SIPRI series of good practice guides on the transport sector as counterproliferation partner is the culmination of a MacArthur-funded research project that recognizes the importance of the transport sector to counterproliferation efforts and seeks to encourage the sector’s enhanced activity and partnerships with government authorities.

Throughout 2015 the project team engaged with a broad range of transport sector stakeholders in Asia, Europe, the Middle East and the United States to better understand their compliance challenges; to explore risks and obligations; and to identify, share and test good practice. In doing so, the team also hosted regional good practice workshops that brought together government officials, experts and transport sector representatives and provided a rare opportunity for a spectrum of stakeholders to engage directly on counterproliferation issues.

The guides reflect the main findings of the project’s research, engagement and workshops. They explore an array of counterproliferation activities and can be used individually or combined to support training, awareness raising or the development of internal compliance programmes. The format and focus have been developed in consultation with the transport sector.



freight is moving. In this context, freight forwarders play important logistical, economic and security roles in regulating trade flows.

In order to comply with export documentation and shipping requirements, many exporters use a freight forwarder to act as their shipping agent. An international freight forwarder is an *agent* for an exporter in moving cargo to an overseas destination. The term freight forwarder is often used interchangeably with ‘non-vessel operating common carrier’ (NVOCC).¹ These agents are familiar with the recipient country’s import rules and regulations, the exporter’s legal requirements, the methods of shipping and the documentation required by foreign trade. Standards for and oversight of the freight forwarding community are established at international and national levels, comprising both public and private entities. For air cargo, freight forwarders are licensed by the International Air Transport Association (IATA). In the United States, the Federal Maritime Commission licenses US-registered forwarders to handle ocean freight. In the United Kingdom, freight forwarders are not licensed, but many are members of the British International Freight Association (BIFA). In general, despite the international and national variations in licensing and standards, freight forwarders are usually legally liable for the goods and the related transaction while overseeing the transport-related transactions.

Freight forwarders help exporters to prepare price quotations by advising on freight costs, port charges, consular fees, the costs of special documentation, insurance costs and handling fees. They recommend the best packing method to protect the merchandise during transit or can arrange to have the merchandise packed at the port or containerized. After shipment, they can route the documents to the seller, the buyer or to a bank (i.e. supplying the letter of credit). Freight forwarders can also make arrangements with customs brokers overseas to ensure that the goods comply with customs export documentation regulations.²

This description of freight forwarders is necessarily general as the goods transport industry, like global trade itself, is undergoing rapid change. Increasingly, the complex needs of the supply chain are being contracted out to third parties. In addition to traditional freight forwarders, exporters are faced with an array of goods transport services from customs brokers to third-party logistics providers (3PL). Furthermore, freight forwarders are increasingly offering comprehensive supply chain services, which include documentation/licensing, insurance/financing, warehousing and carriage, and their liability exposure is similarly expanding.

FREIGHT MANAGEMENT AND COUNTERPROLIFERATION EFFORTS

Traditionally, private sector non-proliferation and counterproliferation efforts have focused on the producer of goods and technologies (the exporter) and sought to ensure their compliance. However, once the items have departed the factory or company warehouse, they are usually physi-

¹ See Hinkelman, E. G., *Dictionary of International Trade*, 11th edn (World Trade Press: New York, 2014).

² A customs broker is an individual or company that is licensed to transact customs business on behalf of others.



cally, and increasingly virtually, managed by freight forwarders.³ While the exporter can aspire to compliance, the freight forwarder is the actual means by which compliance is realized. It is the freight forwarder, for example, that can ensure that the goods are not diverted en route, making freight forwarder compliance indispensable to the overall counterproliferation effort.

At the same time, the increased availability of door-to-door services and deeper contract integration means that freight forwarders are carrying out functions that bring them within the scope of generally held definitions of 'exporter'. This means that freight forwarders face increased compliance risk exposure—potentially across multiple jurisdictions.⁴ It is, therefore, incumbent on freight forwarders to comply for both counterproliferation and self-interested reasons. In 2012, for example, a former manager at a Netherlands-based freight-forwarding company was sentenced to six months in prison for facilitating the illegal export of goods to Iran. In this case, the defendant, not the owner of the goods, 'facilitated' the transaction and was, therefore, found guilty.⁵ In fact, in recognition of the transport industry's role in proliferation procurement, the UN Panel of Experts established pursuant to Resolution 1929 (i.e. the UN Panel of Experts on Iran sanctions) recommended in 2014 that governments exercise greater vigilance over freight-forwarding firms, which often appear as the ordering party on shipments of items destined for Iran.⁶

MANAGING RISK AND STRENGTHENING COUNTERPROLIFERATION EFFORTS THROUGH ROUTINIZED COMPLIANCE

The rapid changes in the transport sector mean that freight forwarders are facing increased compliance responsibilities. In 2009, the US Department of Commerce, Bureau of Industry and Security (BIS) posted federal compliance requirements for freight forwarders on its website.⁷ The guidance enumerates the many existing requirements for US-based forwarders that facilitate the export of items controlled under the Export Administration Regulations (EAR), which address dual-use exports. The guidance also provides insight into BIS policy on enforcing those requirements.

Although the BIS guidance simply reinforces the many existing federal requirements for freight forwarders, it was updated shortly after the US Government agreed a \$9.4 million settlement with the freight-forwarding

³ In offering door-to-door services, the customer is no longer aware or necessarily concerned with how the shipment gets to its destination, namely the modes used and the routing selected.

⁴ For more on how the industry is changing see 'Consolidation in the 3PL industry: why is it happening, and what does it mean?', *Supply Chain Quarterly* (Mar. 2015), <www.supplychainquarterly.com/topics/Logistics/201501023-consolidation-in-the-3pl-industry-why-is-it-happening-and-what-does-it-mean/>.

⁵ US Department of Justice, 'Freight forwarder sentenced to six months in prison for conspiracy to facilitate export of goods to Iran', Press release, 15 May 2012, <www.bis.doc.gov/index.php/about-bis/newsroom/archives/press-release-archives/66-about-bis/newsroom/press-releases/350-freight-forwarder-sentenced-to-six-months-in-prison-for-conspiracy-to-facilitate-export-of-goods-to-iran>.

⁶ United Nations, Final report of the Panel of Experts established pursuant to Resolution 1929 (2010), S/2014/394, 11 June 2014, <www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2014_394.pdf>.

⁷ US Department of Commerce, Bureau of Industry and Security, Office of Exporter Services Export Management and Compliance Division, *Freight Forwarder Guidance*, Feb. 2012, <www.bis.doc.gov/index.php/forms-documents/doc_view/620-new-freight-forwarder-guidance>.



firm DHL for the company's alleged violations of some of the requirements identified in the updated guidance. Thus, issuance of updated guidance in the wake of that settlement should be considered a warning that BIS will continue to vigorously monitor and enforce compliance with these requirements.

The case was a joint civil settlement agreement with BIS and the US Department of Treasury's Office of Foreign Assets Control (OFAC) for violations of US trade controls and record-keeping failures concerning shipments to Iran, Sudan and Syria. In addition to the monetary penalty, DHL agreed to hire a third-party consultant to conduct audits of its trade controls compliance programme, which was clearly lacking. Deepening trade liability chains mean that freight forwarders and related agents must protect their companies while contributing to counterproliferation through greater self-compliance.

Other countries are following similar approaches to addressing proliferation threats particular to the transport industry. Singapore, for example, provides extensive online resource guides for the transport industry in general and to freight forwarders in particular. Published by the Inland Revenue Service of Singapore, the *Guide for the Logistics Service Industry* provides required and recommended protocols for freight forwarders, which are also addressed in the *Strategic Trade Scheme Handbook* published by Singapore Customs.⁸

Some countries are linking transport sector compliance to trade facilitation schemes. As a compliance inducement to freight forwarders and shippers, Hong Kong established the Air Transshipment Cargo Exemption Scheme for Specified Strategic Commodities (SCTREX) in 2000 to facilitate air cargo trade. Parties registered under the SCTREX are exempted individual licensing for air trans-shipment of specified strategic commodities. Japan operates a similar system for maritime and air transport companies and service providers for moving strategic items through Japan.

Key nodes in the compliance process

Key nodes in the export compliance process are set out below. This process should be formalized into the work flow of any freight forwarding operation.

Advance data collection

Prior to each transaction with the exporter, the freight forwarder must obtain complete information about the content, proposed destination and end use or end user of the shipment. For example, the UN Panel of Experts on Iran sanctions noted in its 2014 report that 'The International Freight Forwarders Association (FIATA) has issued a notice to its members warning about the increased use of counterfeit bills of lading in connection with shipments to and from Iran'.⁹

⁸ Inland Revenue Service (IRS) of Singapore, *GST Guide for the Logistics Service Industry* (IRS: Singapore, 2012); and Singapore Customs, *Strategic Trade Scheme Handbook* (Singapore Customs: Singapore, Feb. 2016).

⁹ 'UN experts' report shows Iran's deceptive procurement tactics', Reuters, 12 May 2014.



Vouchsafing the client and identifying restricted parties

As part of their standard due diligence processes, freight forwarders should incorporate restricted party screenings—of whether the proposed carriers participate in various certification schemes such as the Authorized Economic Operator programmes—and ‘red flag reviews’.¹⁰ It is important to note that the screening process includes both the proposed client and the shipment transaction. Consulting the relevant lists has been greatly facilitated by government and UN efforts to consolidate lists.

Identifying restricted or prohibited goods

Freight forwarders should be able to connect prohibited and restricted goods to various destinations. In some cases, however, mundane items cannot be lawfully transported to certain embargoed destinations or can be shipped only under licence. In addition, many dual-use items are difficult to identify as strategic items. Freight forwarders should develop a routine protocol to consult with their clients regarding the controlled status of the shipped items and whether they have been given the appropriate licences. This capability will become increasingly relevant as freight transport services consolidate.

Whole-of-supply-chain compliance

Contemporary supply chains are enormously complex. One transaction alone might involve multiple partners and jurisdictions. Freight forwarders can increase the signal-to-noise ratio by finding clients and partners that have compliance programmes in place.¹¹ For instance, the BIS freight forwarder guidance notes that ‘Building compliance partnerships and sharing compliance strategies with each other and other parties to transactions as part of Standard Operating Procedures will give all involved a competitive edge’.¹² These partnerships should also extend to the public–private realm. Freight forwarders should work proactively with governmental authorities on self-disclosure protocols in the event of inadvertent violations.

Compliance in acquisition

The freight transport industry is undergoing significant change, including the consolidation of discrete functions such as brokering and carrier services. As 3PL, if not fourth party logistics (4PL), becomes the new industry standard for transport, the new firms must include compliance parameters in their due diligence efforts.¹³ Consolidation strategies include acquiring

¹⁰ Palmer, M., ‘Restricted parties and the transport sector’, SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 2, Sep. 2016, <www.sipri.org/publications/2016/restricted-parties-good-practice-guide>; and Palmer, M., ‘Proliferation red flags and the transport sector’, SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 3, Sep. 2016, <www.sipri.org/publications/2016/red-flags-good-practice-guide>.

¹¹ Muscat, I., ‘Securing the supply chain through transport sector cooperation’, SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 1, Sep. 2016, <www.sipri.org/publications/2016/securing-the-supply-chain-good-practice-guide>; and Orzel, R., Pal, D. and Heine, P., ‘Export control compliance and the transport sector: lessons for internal compliance programmes’, SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 5, Sep. 2016, <www.sipri.org/publications/2016/internal-compliance-programmes-good-practice-guide>.

¹² US Department of Justice (note 5).

¹³ A 4PL provider is an integrator that assembles the resources, capabilities and technology of its own organization and other organizations to design, build and run comprehensive supply chain



new service providers. In the mergers and acquisition context, undiscovered export control violations can be the source of serious liabilities, which can arise years after the transaction. As such, successor liability is applicable to the transport sector as much as to regular industry.

Right-sizing compliance

Depending on the size and depth of the services offered by the freight forwarder, its compliance programme should fit seamlessly into its risk mitigation methodologies. While the basic elements of trade compliance already exist as a set of global good practices—standard operating procedures, record-keeping, audits and training—implementation at the company level is determined by its size and scope.

USEFUL WEBSITES

British Department for Business, Innovation & Skills, ‘Freight forwarding: managing risk’, <<https://www.gov.uk/guidance/freight-forwarding-managing-risk>>.

US Department of Commerce, Bureau of Industry and Security, ‘Freight forwarder guidance’, Feb. 2012, <https://www.bis.doc.gov/index.php/forms-documents/doc_view/620-new-freight-forwarder-guidance>.

United Nations, Security Council, ‘Sanctions compliance for the maritime transportation sector’, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/28>.

World Customs Organization, *Strategic Trade Control Enforcement Implementation Guide*, <<http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/guidelines/wco-strategic-trade-control-enforcement-implementation-guide.aspx>>.

International Federation of Freight Forwarders Associations, ‘Director General’s statement on non-proliferation risks’, <http://fiata.com/fileadmin/user_upload/documents/Position_Papers/Non_Proliferation_UN_1540_RESO_speech_21_11_2014.pdf>.

Wassenaar Arrangement, ‘Best practice guidelines on internal compliance programmes for dual-use goods and technologies’, <<http://www.wassenaar.org/wp-content/uploads/2015/06/2-Internal-Compliance-Programmes.pdf>>.

OSCE Forum for Security Co-Operation, ‘Decision No 7/09: Best practice guide on United Nations Security Council Resolution (UNSCR) 1540 export controls and transshipment’, FSC.DEC/7/09, 30 Sep. 2009, <<http://www.osce.org/fsc/39193>>.

solutions. Whereas a 3PL provider targets a function, a 4PL provider targets management of the entire process. Some have described a 4PL provider as a general contractor who manages other 3PL providers, truckers, forwarders, custom house agents and others, essentially taking responsibility for a complete process for the customer. A 4PL provider can also be considered a consulting firm specialized in logistics, transport and supply chain management.

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