

# The Implications of New Transportation Security Measures in Agricultural Logistics

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For you to appreciate the changes that have occurred in our industry over the past two years, I want to quickly sum up what the life of a freight forwarder was before 9/11. All I can say is “Life was good.” We were expediting exports—helping to combat the evil trade imbalance. “Exporters” were seen as inherently good. Paperwork could be turned in after the vessel sailed with rarely a problem or a penalty. In fact it was PAPER—work. Forwarders were allowed to file paper or paperless instructions. The Federal Maritime Commission (FMC) was our biggest policeman watching over what we did. As I’ll explain later—much has changed.

I’d like to clarify what exactly is meant when we talk about “logistics.” Logistics is the science of reliably getting people and things where they are needed, when they are needed, at the lowest possible cost, with resulting customer satisfaction. “Logistics” is an all-encompassing term involving numerous disciplines and specialized functions; it derives from the application of logic to the complete cycle of planning, implementation, execution, and control needed to achieve predetermined objectives. Originally a military term, in recent decades “logistics” has come into worldwide commercial usage to describe the management and the management disciplines of physical distribution systems, with a focus on continuous improvement of process

(better, faster, cheaper) and higher customer satisfaction through integration of functions, communications, facilities, and the services of third parties as in freight forwarders or as they are called now, OTIs (Ocean Transportation Intermediaries).

As an OTI for export shipments, we function as an employee of the exporter or an extension of their office in providing sailing schedules, freight rates for ocean, air, and trucking, filing automated export system (AES), bill of lading masters to the carriers, dock receipts. We book the cargo, track, and trace. We can negotiate letters of credit, bank documents, issue certificate of origins, invoices and packing lists. Finally, we’re problem solvers—many people are involved in the whole logistics chain, and the more fingers in the pie the more chances that something can be missed.



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Shipping facilities must interact with several different governmental agencies. Personnel at sites such as the new Ag Processing Inc. Port of Grays Harbor in Aberdeen, Washington, shown here, must work with the Department of Census, U.S. Customs and Border Protection, Food and Drug Administration, and the Department of Agriculture.

The biggest problem or “challenge” in the new security era is the 24-hour prior notice requirement. As part of the new homeland security initiative, information must be transmitted to the Department of Census 24 hours before the vessel loads or the cargo will not be loaded. The U.S. Customs and Border Protection (CBP) wants to be able to check the manifest for any suspicious activity. This causes problems for agriculture shipments because it is normal to be booking and loading cargo less than 24 hours before the vessel sails. An exporter can confirm a last-minute sale and have the container back at the port the same day for shipment on a vessel sailing that very evening. Our concern is (as an example): the shipment is a container of very expensive stone fruit bound for the Far East for a grocery-store promotion. The fruit must load and arrive on schedule as the customer on the other side has made commitments. The law requires that the manifest information must be received by CBP 24 hours before the vessel loads or the cargo cannot load. If CBP rejects this load because it is under the 24-hour prior notice—what can the exporter do? Well—perhaps he’ll be lucky enough to have a different vessel leaving the next day and arriving at the same time. However, the cold chain must be broken and the fruit loaded into a different container to ship on a different vessel. Extra trucking charges are involved, transloading charges, and possibly even a different ocean freight rate on the other steamship line that had not been factored into the sale price. What began as a profitable shipment has now turned into a nightmare. Fortunately, this new ruling has to go through the Notice of Proposed Rulemaking—and people involved in the process believe it will be at the end of 2004 before there is 100 percent implementation. With this article, I want to give you some info to help you prepare for this new environment.

What options are there to help prevent situations that I just spoke of? How can we work with the system that we’ve been given? Customs has offered a program called AES Option 4 or AES Pass 4. They recently closed the program for new applicants but plan on reopening it when the new rules go into effect. AES Pass 4 allows approved exporters to report final information to Customs up to 10 days AFTER the vessel departs. This gives exporters and OTIs a safety net for reporting the correct information and minimizes the chance of cargo not loading the vessel or incurring a customs penalty for late reporting of information.

We signed up a number of our exporters for the program and can confirm it has saved them and us lots of dollars in penalties for late filing. CBP levies a monetary penalty for not submitting manifest information before the vessel sails. As you know, it is very difficult to compile complete information that quickly; so you want to be a Pass 4 participant. To ensure acceptance into the program when Customs makes it available again, there are some things that exporters and their OTI need to be doing now.

For instance, if you or your OTI are not filing through the AES—get with the program. Customs has made it mandatory that information must have been filed electronically through AES for six months to be eligible for Pass 4. Exporters need to have a minimum of ten shipments in one given month to qualify. Interestingly—a shipment is defined as a bill of lading so 100 containers shipped on a single bill of lading will not count. The shipment needs to be broken into ten bills of lading at ten containers each to qualify. Seems rather arbi-

trary—but keep that in mind. Break bulk shipments would obviously be adversely affected by this ruling, and CBP acknowledged that there needs to be some exceptions to this requirement. They are still working on that issue.

Also—in the future—if applying for Option 4—exporters will need to justify their need for post-departure filing status. We feel Pass 4 is a necessity for agricultural exporters due to the need for freshness and product perishability. Be sure to explain that on the letter of intent.

Besides reporting, another issue that went from “optional” to mandatory is the Export Power of Attorney. In the past—Customs would audit an import Customs broker and each shipment that was handled without the proper power of attorney (POA) on file—a \$1,000 fine per entry would be assessed. That can add up in a hurry. However, it was rarely mentioned or no one ever looked at POAs for export accounts. A signed, shippers letter of instruction was used to qualify as a release of liability for the forwarder—an implied POA. That too has changed—Customs has stated that they will enforce the same requirements and penalties for noncompliance on the outbound cargo as well. The POA has been developed to include all necessary language to allow the OTI to give the exporter the most comprehensive service and meet all legal requirements. If you do not have a signed POA filed with your OTI—ask them about it.

The AES filing, the upcoming 24-hour rule, the AES Pass 4 or Option 4 program—all these require quite a bit of extra work—whether you are acting as your own forwarder or have hired an OTI specializing in perishables. Unfortunately the bottom line is that more expenses are involved in complying with the 24-hour prior-notice rule. Forwarders need to charge for the extra work required in this security-conscious environment, and exporters will need to pass along those costs accordingly. How that will affect our marketability in overseas markets remains to be seen.

I would like to switch gears and discuss issues relating to the importation of perishable goods. I personally don’t handle imports, but I have spoken with others who specialize in perishables for their opinions on the situation in Los Angeles.

If your company is an importer, shipper, manufacturer or you manufacture, produce, hold or pack food, you must be registered with the Food and Drug Administration (FDA). Failure to register will result in cargo held upon arrival at the first port of entry into the U.S.

In Los Angeles, there are only two Customs inspection sites. My company alone has over 100 containers a week going through the USDA inspection sites, and most of this occurs on overtime. Are these additional (USDA) sites going to remain operational? Will overtime be covered and allowed through CBP? Also—the CBP does not consider refrigerated containers “perishable” because they can be plugged in. However for some products, every day sitting “on hold” adversely affects the quality and condition. As of yet, these important issues and procedures have not been ironed out and so there is definitely concern.

The FDA and CBP have worked together to program the CPB AES computer system to accept transmission of prior notice in lieu of using the FDA website, thereby helping to eliminate duplication of data used by both agencies. However, many glitches still remain to be worked out to file a fully compliant prior notice. Much time has been spent to work around

these system failures to obtain prior-notice confirmation and CBP releases on shipments. Time equals money. These costs will be passed along to you, the importer. The FDA's own study stated that these extra procedures cost at least \$75 per shipment, and that is a low estimate.

Another concern is the issue of compliance itself with FDA regulations. We all strive for 100 percent accuracy, but we are human and errors will occur. The way the law is written, the FDA is requiring 100 percent accuracy. In other words, whether the entry is flagged due to a legitimate concern or a simple clerical error, the cargo will be refused entry and goes to General Order Warehouse to be sold. That scenario is bad enough, but it is doubtful whether there is even enough cold storage to handle all the possible rejections.

C-TPAT is a new program, and it stands for Customs Trade Partnership Against Terrorism. This is a voluntary program that all importers should join. Through C-TPAT, CBP asks businesses to ensure the integrity of their security practices and to communicate this to their business partners within the supply chain. Upon gaining approval, the benefits to importers are a reduced number of inspections (reduced border times), access to the C-TPAT membership list, and an assigned account manager. The information on how to apply for C-TPAT is on the Customs website, [www.CBP.gov](http://www.CBP.gov).

Finally, I want to discuss other programs and organizations that are working on your behalf to make our food supply safer from terrorists but at the same time facilitate trade.

The Agriculture Ocean Transportation Coalition—[www.AgOtc.org](http://www.AgOtc.org)—was founded in 1987 and monitors government and commercial activity on transportation issues. For instance, each year 13 million shipping containers come into U.S. ports. Only 2–3 percent of these containers are inspected. Some government officials are demanding 100 percent inspection. That is impossible at this time and would stop our economy dead in its tracks. The AgOtc is working to educate lawmakers about our industry and to facilitate workable solutions for tighter security.

Here are other websites with valuable information on mandatory and voluntary security programs: [www.NCB-FAA.org](http://www.NCB-FAA.org), [www.USDA.gov](http://www.USDA.gov), [www.CBP.gov](http://www.CBP.gov), and [www.FDA.gov](http://www.FDA.gov).

Many new, complicated laws are on the books, and understanding them and fully complying in the future will be the difference between success and failure.

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