

**WHAT'S IN THE BOX?
AN OVERVIEW OF DOMESTIC AND INTERNATIONAL
DEVELOPMENTS IN PORT SECURITY AND SAFE
CARRIAGE OF CONTAINERIZED CARGO**

by

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I. INTRODUCTION

The sharp increase in terrorism and terrorist threats in recent years has heightened the awareness of maritime nations for the need to implement security measures to protect vessels, shipping interest and ports. The maritime shipment of cargo is vitally important to the global economy, and accordingly the United States and other maritime nations are endeavoring to assure the safety of ports without severely hindering maritime trade. The containerized movement of cargo, while more efficient than the break bulk carriage of cargo, also creates the potential vulnerability of security, given that a sealed container could potentially conceal dangerous or illegal contents including biological or nuclear weapons. In addition to domestic security problems, United States vessels encounter numerous security threats during voyages on the high seas. The combined attempts of the United States and other maritime nations in combating current security issues are discussed below.

II. UNITED STATES LEGISLATION TO COMBAT SECURITY THREATS

A. Maritime Transportation Security Act of 2002

The Maritime Transportation Security Act (MTSA) was passed to protect U.S. ports and waterways from potential terrorist attacks. The Act is intended to focus on those entities that may be involved in a transportation security incident and provides for the Department of Homeland Security to conduct comprehensive threat and vulnerability assessments at critical ports including local threat profiles and an evaluation of all aspects of security in the surrounding area. The new regulations require security plans for over 10,000 vessels¹ and 5,000 facilities.² Each individual vessel owner must complete a self-assessment and develop a security plan. The TSA and Coast Guard have created a tool to facilitate this process. The Secretary of the Department of Homeland Security conducted an assessment of vessel types to classify those “that pose a high risk of being involved in a transportation security incident.”³ Owners of those vessels within the high risk category must prepare a security plan “for deterring a transportation incident to the

¹ Some examples from Homeland Security, *Protecting America's Ports* of vessels that will be most directly impacted by the regulations include:

- a small cruise ship traveling from Chicago to Montreal
- a SOLAS-certified cargo ship carrying grain traveling from Jacksonville to New York
- a container vessel carrying cargo from New Orleans to San Juan or from Hong Kong to Los Angeles
- a barge carrying auto part containers traveling from Seattle to Vancouver
- a cruise ship on a Caribbean voyage
- a dinner boat on the Chesapeake Bay carrying more than 150 passengers
- a gaming boat on the Mississippi
- Ferries operating in Puget Sound, Washington
- a barge carrying home heating oil on the Hudson River
- a tanker carrying liquefied natural gas
- a supply vessel heading to an offshore rig
- a towing vessel pushing an oil barge on the Mississippi

² Some examples from Homeland Security, *Protecting America's Ports* of maritime facilities most directly impacted by the regulations include:

- a facility that handles dangerous cargo, including oil, chemicals, and explosives
- a facility that services vessels that carry more than 150 passengers
- a facility that receives vessels on international voyages, including vessels solely navigating the Great Lakes

³ 46 U.S.C. § 70102(b) (2002).

maximum extent practicable.”⁴ DHS is also deploying verification teams to audit 2,500 foreign ports and confirm that the foreign ports have effective security programs.⁵

The MTSA created Maritime Safety and Security Teams. These Coast Guard rapid response teams are located at ports across the country and are capable of nation-wide deployment via sea, ground, or air in the event of an emergency. These teams were formed as a direct response to the terrorist attacks of September 11, 2001. Automatic Identification Systems are also used to send detailed ship information to shore-based agencies, as well as other ships. This process provides a vehicle for comprehensive, real-time tracking and monitoring of vessels. This process also stimulated an international initiative to increase the safety and security of shipping channels.⁶

The threat assessment has been challenged in federal court. In 2006 the Second Circuit decided *Cassidy v. Chertoff*, a case involving ferry riders who complained that their Fourth Amendment rights were violated when their carry-on luggage or car trunks were searched by ferry personnel. The Coast Guard’s threat assessment has determined that “certain maritime vessels, including those that weigh more than 100 gross register tons or are licensed to carry more than 150 passengers ‘are at high risk of a transportation security incident.’”⁷ The ferry owner was required to formulate a Vessel Security Plan (VSP) because the ferry was classified as a vessel weighing more than 100 gross tons. The Coast Guard also required those vessels operating under a VSP to “screen persons, baggage (including carry-on items), personal effects, and vehicles for dangerous substances and devices at the rate specified in the approved Vessel Security Plan.”⁸ Because the court found that the government’s “special need” to maintain security outweighed the passengers’ privacy interest in their personal belongings and vehicles, the constitutional claims were dismissed.⁹

B. The Homeland Security Act of 2002

The passage of the Homeland Security Act in 2002 resulted in a major change to the organization of the Executive branch.¹⁰ The Department of Homeland Security (DHS) encompasses the agencies with jurisdiction over homeland security matters which were previously under the umbrella of different Departments. DHS has five major divisions: 1) Boarder and Transportation Security, 2) Emergency Preparedness and Response, 3) Science and Technology, 4) Information Analysis and Infrastructure Protection, and 5) Management. The DHS is also absorbing other critical agencies including the U.S. Coast

⁴ *Id.* at § 70103(c)(1), (2).

⁵ Homeland Security, *Protecting America’s Ports: Maritime Transportation Security Act of 2002, July 2003 Fact Sheet*, July 2003, available at http://users.monet.com/district8wr/public/MTSA_Port_Presskit.pdf.

⁶ *Id.*

⁷ *Cassidy v. Chertoff*, 471 F.3d 67 (2nd Cir. 2006).

⁸ 33 C.F.R. § 104.265(e)(1) (2003).

⁹ *Cassidy*, *supra* note 35.

¹⁰ Pub.L. 107-296, Nov. 25, 2002, 116 Stat. 2135 (5 USCA §§ 1401, 1402, 3319, 3521 to 3525, 9701, 6 USCA §§ 101 to 103, 111 to 113, 121, 122, 124, 124a to 124l, 131 to 134, 141 to 145, 161 to 165, 181 to 193, 195, 195a to 195c, 201 to 203, 211 to 218, 231 to 239, 251 to 256, 271 to 279, 291 to 298, 311 to 321, 321a to 321m, 331, 341 to 347, 361, 381, 391 to 395, 411 to 415, 421 to 428, 441 to 444, 451 to 468, 481 to 484, 488, 488a to 488i, 491 to 496, 511, 512, 521, 522, 531 to 533, 541 to 543, 551 to 557, 571 to 580, 591 to 596, 596a, 601, 603 to 609, 611, 612, 18 USCA § 3051, 44 USCA §§ 3537, 3538, 49 USCA § 44921).

Guard, the U.S. Secret Service, and the Bureau of Citizenship and Immigration Services.¹¹

The Coast Guard is the lead agency for Maritime Homeland Security. The Coast Guard has established several strategic objectives for homeland security, including preventing terrorist attacks or the exploitation of the U.S. Maritime Domain by terrorists; reducing vulnerability to terrorism; protecting population centers, critical infrastructure, boarders, and ports; protecting maritime transportation without unduly restricting freedom of use for legitimate purposes; and minimizing the damage caused by any attacks that do occur. The Coast Guard's Maritime Strategy for achieving these objectives has six parts: "(1) increase maritime domain awareness, (2) conduct enhanced maritime security operations, (3) close port security gaps, (4) build critical security capabilities and competencies, (5) leverage partnerships to mitigate security risks, and (6) ensure readiness for homeland and defense operations."¹² Coast Guard law enforcement officers, or Sea Marshals, now board ships both entering and exiting U.S. harbors to ensure that the ships remain on course. The Coast Guard has also conducted risk assessments designed to identify high-risk areas and has created new guidelines for port security plans.¹³

C. The Safe Port Act

The Security and Accountability for Every Port Act of 2006¹⁴ (Safe Port Act) was enacted by Congress and signed by the President on October 13, 2006. The Safe Port Act codified certain programs to enhance security at the United States ports. Several of the Safe Port Act's programs, including the Customs-Trade Partnership Against Terrorism, the Transportation Worker Identification Credential, the one hundred percent scanning initiative, and the Container Security Initiative will be covered in subsequent sections. The Safe Port Act established the Domestic Nuclear Detection Office within the Department of Homeland Security. The Safe Port Act further appropriates funds for the integrated Deep Water System Program.

The Safe Port Act requires the establishment of interagency operational centers for port security to be established at all high-security ports. These centers are to be modeled after pilot program centers in Miami, Florida; Norfolk/Hampton Roads, Virginia; Charleston, South Carolina; and San Diego, California; and the virtual operation center of the Port of New York and New Jersey. Each center will be organized to fit the needs of the individual port. In addition § 108 of the Act amends 46 U.S.C. § 70107A to include:

¹¹ THOMAS SCHOENBAUM, ADMIRALTY AND MARITIME LAW 4TH ED. VOL. 1 68 (2004).

¹² *Id.* at 71.

¹³ *Id.* at 71–72.

¹⁴ Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (2006) [hereinafter SAFE Port Act].

(b) CHARACTERISTICS.—The interagency operational centers established under this section shall—

...

(4) be incorporated in the implementation and administration of—

(A) maritime transportation security plans developed under section 70103;

(B) maritime intelligence activities under section 70113 and information sharing activities consistent with section 1016 of the National Security Intelligence Reform

Act of 2004 (6 U.S.C. 485) and the Homeland Security Information Sharing Act (6 U.S.C. 481 et seq.);

(C) short- and long-range vessel tracking under sections 70114 and 70115;

(D) protocols under section 201(b)(10) of the SAFE Port Act;

(E) the transportation security incident response plans required by section 70104; and

(F) other activities, as determined by the Secretary.

The Act also appropriates \$60,000,000 per year for fiscal years 2007-2010 to carry out these requirements.¹⁵

The Safe Port Act also sets out a strategic plan to enhance the security of the international supply chain. This plan includes specifying the division of power between Federal, State, local, and tribal government agencies as well as private stakeholders in protecting the movement of containers through the international supply chain including an information sharing process. The different interested parties will work together to recommend legislative, regulatory, and organizational changes to facilitate coordination and enhance security.¹⁶

¹⁵ a) The Safe Port Act, Pub.L. 109-347, Oct. 13, 2006, 120 Stat. 1884 (6 USCA §§ 115, 220, 239, 314a, 470, 591, 592, 592a, 593 to 596, 901, 911 to 913, 921 to 926, 941 to 945, 961 to 973, 981 to 985, 1001 to 1003, 19 USCA § 1553-1, 31 USCA §§ 5361 to 5367, 42 USCA §§ 300hh-14, 5189e, 46 USCA § 70107A, 47 USCA §§ 1201 to 1205).

¹⁶ *Id.*

D. National Strategy for Maritime Security

The National Strategy for Maritime Security was published on September 20, 2005.¹⁷ The purpose of the National Strategy is to coalesce all federal and state security measures into a unified approach to defeat threats to maritime security. The National Strategy for Maritime Security was developed by the Secretaries of the Department of Defense and Homeland Security in response to a directive from the President in 2004 to synchronize department maritime security strategy. The perceived threats included nation state threats, terrorist threats, transnational criminal and piracy threats, environmental destruction, and the illegal seaborne immigration. As a supplementation of the plan, the departments also developed eight supporting plans that include the National Plan To Achieve Domain Awareness, Global Maritime Intelligence Integration Plan, The Interim Maritime Operational Response Plan, The International Outreach And Coordination Strategy, The Maritime Infrastructure Recovery Plan, The Maritime Transportation Systems Security Plan, The Maritime Commerce Security Plan, and The Domestic Outreach Plan. These plans, along with the National Strategy for Maritime Security, created a comprehensive national effort to combat security.

The strategic objectives of the National Strategy for Maritime Security include protection of maritime related population centers and critical infrastructures, safeguarding the ocean and its resources and minimizing damage and expediting recovery. The plan also provides for the deployment of layered security to unify public and private security measures.

E. The Transportation Security Administration (“TSA”)

The Transportation Security Administration (TSA) was created by the Aviation and Transportation Security Act and was given broad power to improve security for all elements of the transportation system.¹⁸ The TSA works closely with the Coast Guard to implement the Maritime Transportation Security Act of 2002 including developing a National Maritime Transportation Security Plan, establishment of the TWIC program, and improving security measures to prevent and respond to terrorist attacks. The TSA also issues need-based Port Security Grants for security assessments and mitigation strategies and to enhance facility and operational security at ports. TSA is also playing an important role in creating a radiology detection system which uses sensors to detect nuclear devices or dirty bombs.¹⁹

F. Implementing Recommendations of the 9/11 Commission Act of 2007

The House and Senate passed the implementing recommendations of the 9/11 Commission Act of 2007 in July 2007. The Act was signed into law by President George W. Bush on August 3, 2007.²⁰ The Act provides for transportation, security planning and information sharing. It further provides for transportation security enhancement including authorization of visible intermodal prevention and response

¹⁷ http://www.dhs.gov/xlibrary/assets/HSPD13_MaritimeSecurityStrategy.pdf

¹⁸ The Aviation and Transportation Security Act (ATSA): Pub.L. 107-71, Nov. 19, 2001, 115 Stat. 597(49 USCA §§ 114, 115, 44917 to 44920, 44939 to 44944, 45107, 46503, 48301). Sections of the Act for establishment of TSA: Pub. L. No. 107-71, Sec. 101, et seq. (49 USC § 114 et seq.)

¹⁹ *Id.*

²⁰ Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, 121 Stat. 266 (2007) [hereinafter 9/11 Implementation Act].

teams,²¹ the creation of surface transportation security inspectors, surface transportation security technology information sharing, creation of a national explosives detective canine team training program, a maritime and surface transportation security user fee study and the prohibition of the issuance of transportation security cards to convicted felons.²² The Act further provides for improving intelligence and information sharing between the federal government with state, local and tribal governments,²³ congressional oversight of intelligence,²⁴ and strengthening efforts to prohibit terrorist travel.²⁵ The Act further provides for improving critical infrastructure security in Title X²⁶ and creation of enhanced defenses against weapons of mass destruction.²⁷ As detailed below, the Act implements several of the recommendations of the 9/11 Commission including the inspection of sea cargo entering the United States.

III. REQUIRED UNITED STATES SECURITY MEASURES

A. Transportation Worker Identification Credential (TWIC) Program

The TWIC program was created to identify and screen workers in U.S. transportation facilities who have access to secure areas. The Transportation Security Administration began developing the TWIC program for maritime ports after the passage of the Maritime Transportation Security Act of 2002.²⁸ The Security and Accountability For Every (SAFE) Port Act of 2006 required that the TWIC program be implemented at the 10 highest-risk ports by July 1, 2007. It is estimated that there will be approximately 1.2 million TWIC users, which is far more than originally anticipated. The deadline for implementing the program at all ports, April 15, 2009, was successfully reached.²⁹

To obtain a TWIC, the applicant must provide personal information such as his or her name, address, and immigration status, biometrics for an FBI background check, and pay the applicable fees.³⁰ After receiving the application, TSA conducts a security threat assessment resulting in a final disposition.³¹ TSA will determine that the applicant is a security threat if the applicant's immigration status is not as required, the applicant has been adjudicated as lacking mental capacity, the applicant has a disqualifying criminal offense (see 49 C.F.R. 1572.103 for disqualifying offenses), or any information revealed by the threat assessment leads TSA to believe the applicant is a security threat.

²¹ *Id.* at § 1303.

²² *Id.* at §§ 1304–1309.

²³ *Id.* at §§ 501–541.

²⁴ *Id.* at §§ 601–605.

²⁵ *Id.* at Title V(ii), §§ 701–725.

²⁶ *Id.* at §§ 1001–1003.

²⁷ *Id.* at Title XI, §§ 1001–1003.

²⁸ 46 U.S.C. § 70101 (2002).

²⁹ United States Government Accountability Office, *Transportation Security: Transportation Worker Identification Credential: A Status Update*, GAO-080-1151T, Sept. 17, 2008, available at <http://www.gao.gov/new.items/d081151t.pdf>. Although more than \$1 million TWIC cards have been issued, many port facilities do not own appropriate scanners to read the biometric information. Therefore, as a practical matter, the TWIC card is often used as the equivalent of a second identification card such as a drivers' license.

³⁰ 49 C.F.R. §§1572.17, 1572.501 (2003).

³¹ 49 C.F.R. §1572.21 (2003).

The TSA has promulgated requirements for the physical characteristics of the card as well as which authorities are authorized to issue the card.³² The TWIC expires five years after issuance, but a TWIC may be issued with an expiration date to match the expiration of the worker's visa.³³ Newly hired employees may be allowed access to secure areas for 30 days provided they are escorted by an individual with a TWIC.³⁴ Each vessel owner or operator is responsible for informing its employees of the requirement to apply for and maintain a TWIC and for ensuring the TWIC procedures are implemented in their vessel.³⁵

B. Automated Export System and Electronic Export Information

The Automated Export System (AES) is used by exporters to electronically declare international exports to the U.S. Customs and Border Protection (CBP). The rule became effective on July 2, 2008, and the provisions were implemented by the Census Bureau on September 30, 2008. The United States Trade Promotion Authority Act of 2002³⁶ requires that any U.S. Principal Party in Interest (USPPI) with commercial cargo to be transported out of the U.S. by vessel electronically transmit certain information to CBP no later than 24-hours prior to departing from a U.S. port. The filing must be done by the USPPI or the authorized U.S. agent of the USPPI certified to file through AES. The information provided must be based on personal knowledge and made from within the United States.³⁷ The carrier may not load cargo without first receiving an electronic filing citation or proof of an appropriate exemption.³⁸ All documents pertaining to an export shipment must be retained for five years from the date of export.³⁹

Because it can be difficult to have complete knowledge of the required information prior to loading the cargo, the Census Bureau allows for "Option 3" which requires the electronic filing of certain specified data elements prior to export. Complete information must then be transmitted five working days after export. Approved filers may apply for "Option 4" which requires no electronic filing prior to departure, but requires that complete information be transmitted within ten working days of exportation.⁴⁰

Civil penalties in the amount of \$1,100 per day will be assessed for each day the filing is delinquent. Failure to file, submission of false or misleading information, or reporting to further illegal activities will result in a fine of not more than \$10,000 or imprisonment for not more than five years, or both. In addition, any person convicted of these offenses forfeits any interest in the property that was the subject of the violation.⁴¹ These penalties are substantially higher than those previously imposed by the federal government.

³² 33 C.F.R. §101.515 (2003).

³³ 49 C.F.R. §1572.23 (2003).

³⁴ 33 C.F.R. §104.267 (2007).

³⁵ 33 C.F.R. §104.200 (2007).

³⁶ Pub.L. 107-210, Aug. 6, 2002, 116 Stat. 933 (7 USCA § 7101 note, 19 USCA §§ 1432a, 1583, 2318, 2401, 2401a to 2401g, 1583, 3801 to 3813, 3539, 26 USCA § 35, 6050T, 7527, 42 USCA § 300gg-45) (*U.S. Trade Promotion Authority Act*).

³⁷ 15 C.F.R. §30.3 (2005).

³⁸ 19 C.F.R. §192.14 (2003).

³⁹ 15 C.F.R. §30.10 (2005).

⁴⁰ Export Administration Regulations, Export Clearance Requirements §758.2 (2007).

⁴¹ 15 C.F.R. §30.71 (2005).

The information provided helps the government prevent the export of goods by unauthorized parties to unauthorized destinations and end users and helps the authorities identify suspicious shipments before they leave the port. The information gathered is also used to compile accurate export statistics.

Electronic entry summaries are also being used for imports. These summaries must be completed by the importer or its broker and filed with CBP. All goods entering Foreign Trade Zones must be reported as general imports. The Census Bureau also collects the import information and compiles statistics based on the electronic entry summaries. All information collected for AES is used only for official purposes as authorized by the Secretary of Commerce.⁴²

C. One Hundred Percent Scanning Initiative

Containers considered to be “high-risk” have long been scanned for radiation when arriving at ports. In 2006, the SAFE Port Act required that 100 percent of all containers arriving in the United States be scanned at the twenty-two highest volume ports by December 31, 2007.⁴³ The Act also tasks the Secretary of Homeland Security with developing a strategy to prioritize ports needing radiation detection equipment, creating standard operating procedures for inspecting containers, promulgating operator training programs, and investigating the health risks of the imaging technology and the overall plan.⁴⁴ Random physical searches of containers in addition to those that were already required by law were required within a year of enactment of the SAFE Port Act.⁴⁵

In 2007 the Implementing Recommendations of the 9/11 Commission Act of 2007⁴⁶ amended the requirements of the SAFE Port Act. The 9/11 Implementation Act prohibits the entry of any container loaded onto a vessel in a foreign port into the United States which was not scanned by non-intrusive imaging equipment and radiation protection equipment at the foreign port prior to being loaded.⁴⁷ This requirement is to become effective on July 1, 2012, but may be extended another two years at the request of the Secretary of Homeland Security.

As of October 15, 2008, all containers in transit to the U.S. must be sealed with a seal that meets the International Organization for Standardization Publicly Available Specification 17712 (ISO/PAS 17712) for sealing containers. All vessel carriers must transmit all seal numbers to CBP twenty-four hours before the cargo is loaded at a foreign port. The information is to be transmitted using the Vessel Automated Manifest System.⁴⁸

D. Determining Which Containers are High-Risk

The CBP uses the Automated Targeting System (ATS) to process the advance manifests received at the National Targeting Center to detect any anomalies in the manifest or passenger information and determine which passengers or cargo need to be subjected to increased scrutiny. The ATS algorithm uses approximately 240 factors in

⁴² 15 C.F.R. 30.10 (2005).

⁴³ SAFE Port Act.

⁴⁴ SAFE Port Act, §121(b), 6 U.S.C. § 921(b).

⁴⁵ SAFE Port Act, §123, 6 U.S.C. § 923.

⁴⁶ 9/11 Implementation Act.

⁴⁷ BENEDICT ON ADMIRALTY 7TH § 15.05[B][1] (Frank L. Wiswall, Jr. ed. 2006).

⁴⁸ Container Seals on Maritime Cargo, 73 Fed. Reg. 46,029 (Aug. 7, 2007).

calculating which containers are high-risk. Those containers are then selected for physical or non-intrusive scanning when they arrive at port.⁴⁹

The SAFE Port Act requires additional non-manifest data elements in order to improve the high-risk targeting system, including security elements of entry data. This additional data is to be submitted in advance as information relating to cargo entering the U.S. The Act further requires that CBP create regulations to implement this mandate and arrange for an independent review of the system's capabilities and effectiveness.⁵⁰

E. Container Security Initiative

The goal of the Container Security Initiative (CSI) Program is better securing container traffic. The idea behind the CSI is to make the U.S. border the last line of defense, as opposed to the first. The program was initiated in January 2002 to identify and examine high-risk containers for weapons of mass destruction at the foreign port before they are loaded for transport to the U.S. The first ports to implement the program were those shipping the greatest number of containers to the U.S., and then the program continued to expand. The SAFE Port Act made the CSI Program statutory in 2006,⁵¹ and the program is now operational at ports throughout the world. The program requires the cooperation of foreign governments to allow U.S. CBP officials to go to the foreign port and work together with their foreign counterparts to carry out their duties.

The CSI Program has three core elements: 1) identify high-risk containers, 2) prescreen and evaluate containers prior to shipping, and 3) use technology to prescreen high-risk containers so that screening can be done rapidly to avoid slowing down the flow of trade.⁵² To become part of the CSI program, the foreign port must have regular, direct, and substantial container traffic to the U.S. The port is required to establish an automated system for risk management, share critical intelligence, data, and risk management information with CBP, conduct a port assessment and commit to resolving vulnerabilities in port infrastructure, and maintain the integrity of the programs.⁵³ CBP must also be able to inspect any cargo exiting, transiting, or originating in the participating country. CSI also has a reciprocal program which allows participating countries to send their customs officers to major U.S. ports to target cargo being exported to their country.⁵⁴

IV. SECURITY PREVENTION OF ILLEGAL IMPORTS AND PROTECTION OF THE UNITED STATES ECOLOGY

A. Illicit Drug Smuggling

The Maritime Drug Law Enforcement Act was originally passed in 1980 in response to the international rise in maritime drug smuggling.⁵⁵ The Act was intended to address the threat of illicit drugs on society by allowing for the enforcement of U.S. drug laws

⁴⁹ BENEDICT ON ADMIRALTY, *supra* note 37 at § 15.05[B][2].

⁵⁰ *Id.*

⁵¹ SAFE Port Act, 6 U.S.C. §§ 944, 945.

⁵² BENEDICT ON ADMIRALTY, *supra* note 37 at §§ 15.02[C], [C][1].

⁵³ *Id.* at § 15.02 [C][2].

⁵⁴ *Id.* at § 15.02 [C][3].

⁵⁵ Maritime Drug Law Enforcement Act, Pub. L. No. 109-304, 120 Stat. 1686 Oct. 6, 2007 (codified at 46 U.S.C. § 70501).

outside the territorial jurisdiction of the United States.⁵⁶ The relevant sections read in part:

§ 70502....

“(c) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—

“(1) IN GENERAL.—In this chapter, the term ‘vessel subject to the jurisdiction of the United States’ includes—

“(A) a vessel without nationality

“(B) a vessel assimilated to a vessel without nationality under paragraph (2) article 6 of the 1958 Convention on the High Seas;

“(C) a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States;

“(D) a vessel in the customs waters of the United States;

“(E) a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States;

“(F) a vessel in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999 (43 U.S.C. 1331 note), that—

“(i) is entering the United States;

“(ii) has departed the United States; or

“(iii) is a hovering vessel as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

...

§ 70503. Manufacture, distribution, or possession of controlled substances on vessels

“(a) PROHIBITIONS.—An individual may not knowingly or intentionally manufacture or distribute, or possess with the intent to manufacture or distribute, a controlled substance on board—

“(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

“(2) any vessel if the individual is a citizen of the United States or a resident alien of the United States.

⁵⁶ *US v. Hernandez et. al.*, 2009 U.S. App. LEXIS 9863 (1st Cir. 2009)

“(b) EXTENSION BEYOND TERRITORIAL JURISDICTION.—Subsection (a) applies even though the act is committed outside the territorial jurisdiction of the United States.”⁵⁷

The First Circuit recently upheld the MDLEA in the face of a challenge to the Act’s constitutionality in *U.S. v. Hernandez* on May 5, 2009, stressing that the Coast Guard in that case had obtained permission from the Bolivian government (the vessel was a Bolivian vessel) to enforce the laws of the U.S. against those onboard the vessel. The court also stated that “jurisdiction under the MDLEA is not an element of the offense, it is a ‘preliminary question of law to be determined by the trial judge.’”⁵⁸ The MDLEA allows the Coast Guard to board suspect vessels as well as apprehend and detain drug smugglers before they reach the U.S. It thus reduces the amount of illicit narcotics to reach our ports. This reduces the burden on CBP officials at the ports.

B. Asian Gypsy Moth Inspection Program: Protection of the Domestic Ecosystem

The Asian Gypsy Moth Inspection Program was created by the Department of Homeland Security (DHS) and Customs and Border Protection (CBP) in cooperation with the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS). The program became effective in late May of 2009 in an attempt to prevent the introduction and proliferation of this harmful insect pest. APHIS provides information to CBP including risk-related data on countries where the Asian Gypsy Moth is known to live and develops inspection procedures. CBP conducts the actual inspection of vessels.

The Asian Gypsy Moth is not currently present in North America but is known to feed on approximately six hundred plant species and can have devastating effects on agriculture and forest resources in the United States. The risk area for the Asian Gypsy Moth is in East Asia between 24 and 60 degrees North Latitude. The high-risk area includes Japan, South Korea, and the North East coast of China. Female moths lay eggs between May and October, and as egg masses are the most likely life stage to be found on a vessel, extra care should be exercised during this season.

If the Asian Gypsy Moth is detected on a vessel, said vessel may be required to return to international waters and undergo treatment for the infestation. It may also result in the re-inspection of the vessel; and if the risk is not extinguished, the vessel may ultimately be refused entry into the port. To avoid these consequences, the vessel owner or operator should adhere to sanitation standards which require the removal and destruction of all Asian Gypsy Moth egg masses before arrival at a U.S. port. Egg masses should be destroyed by placing them in alcohol, boiling them, or incinerating them. It is important that vessels bound for North America from the “risk area” be inspected prior to arriving at a U.S. port.⁵⁹

⁵⁷ 46 U.S.C. §§ 70502, 70503 (2002).

⁵⁸ *Hernandez*, *supra*, note 46 at 8.

⁵⁹ U.S. CUSTOMS AND BORDER PATROL AND U.S. DEPARTMENT OF AGRICULTURE, ASIAN GYPSY MOTH INSPECTION PROGRAM FOR THE MARITIME INDUSTRY, *available at* http://www.cbp.gov/linkhandler/cgov/border_security/port_activities/gypsy_moth.ctt/gypsy_moth.pdf

C. Stowaways

Stowaways are another form of “unauthorized content” that is sometimes found in container shipments. Over the past twenty years there have been many incidents of stowaways on cargo ships from Eastern Europe and Africa trying to hitch rides to the U.S. and Canada. Often these stowaways are not sure exactly where the vessel is headed, and there are many stories of stowaways who never reached their destination due to miscalculations in food rations, suffocation in containers without adequate ventilation, or even death by asphyxiation in containers that have recently been fumigated. Stowaways are often seeking improved economic opportunities or hoping to escape persecution in their home countries.

Stowaways Under U.S. Law

Whatever the reason, those who stow away on a vessel in the United States or enter the United States as a stowaway are subject to criminal charges. 18 U.S.C. § 2199 defines “stowaway” and lays out the punishment for stowaways who are discovered.⁶⁰

1. Insurance Issues

Stowaways often cause damage to the cargo they ride along with in the containers. Problems often arise when carriers try to collect insurance money on damaged cargo. In *American Home Assurance Company v. Brazilian Overseas Shipping Services*, the Fifth Circuit held in favor of the insurer and ordered the charterer, Brazilian Overseas Shipping Services (Boss Lines) to pay for the \$75,983.17 in damage to a coffee shipment caused by the urine and excrement of nine stowaways during the seven-day voyage.⁶¹ The court reasoned that the presence of stowaways did not affect the seaworthiness of the vessel and thus did not implicate the Ship owner’s responsibility under the charter party. The charter party established that negligence on the part of the part of the vessel captain or

⁶⁰ § 2199. Stowaways on vessels or aircraft

Whoever, without the consent of the owner, charterer, master, or person in command of any vessel, or aircraft, with intent to obtain transportation, boards, enters or secretes himself aboard such vessel or aircraft and is thereon at the time of departure of said vessel or aircraft from a port, harbor, wharf, airport or other place within the jurisdiction of the United States; or

Whoever, with like intent, having boarded, entered, or secreted himself aboard a vessel or aircraft at any place within or without the jurisdiction of the United States, remains aboard after the vessel or aircraft has left such place and it thereon at any place within the jurisdiction of the United States; or

Whoever, with intent to obtain a ride or transportation, boards or enters any aircraft owned or operated by the United States without the consent of the person in command or other duly authorized agent—

- (1) shall be fined under this title, imprisoned not more that 5 years, or both;
- (2) if the person commits an act proscribed by this section, with the intent to commit serious bodily injury, and serious bodily injury occurs to any person other than a participant as a result of a violation of this section shall be fined under this title or imprisoned not more than 20 years, or both; and
- (3) if an individual commits an act proscribed by this section with the intent to cause death, and if the death of any person other than a participant occurs as a result of the violation of this section, shall be fined under this title, imprisoned for any number of years or for life, or both.

⁶¹ *American Home Assurance Co. v. Brazilian Overseas Shipping Serv.*, 43 F.3d 995 (5th Cir. 1995).

crew resulting in the presence of stowaways on the vessel was attributed to the charterer. Thus, the court also indemnified the Ship-owner.⁶²

The case of *United Brands Co. v. M.V. Isla Plaza* involved damage to the ship's structure as a result of a fire caused by stowaways lighting matches to stay warm in a refrigerated cargo hold.⁶³ The parties settled as to the damage to the cargo for an undisclosed amount, but could not settle on the damage to the vessel. Judge Sotomayor held that United Brands was "not liable to the defendants for any damage to the *Isla Plaza* caused by stowaways because United Brands had no duty, contractual or otherwise, to control access to the vessel at the loading dock."⁶⁴ The time charter required the Ship-owners to provide and fund any security needed for the vessel, including gangway security.

2. Immigration Issues

Vessels arriving in the U.S. with unauthorized aliens as stowaways have several duties regarding the detention, maintenance, and repatriation of those stowaways. 8 C.F.R. § 241.11 (a) requires that the "owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft bringing any alien stowaway into the United States is required to detain the stowaway on board the vessel or aircraft, at the expense of the owner, until completion of the inspection of the alien by an immigration officer." Subsequent sections provide that the carrier will be liable for the expenses incurred treating and detaining a stowaway, the expense of repatriating the alien (the arrangements must be made by the carrier), detention of stowaways ordered removed until such time as they can leave the country, and expenses relating to the detention and maintenance of stowaways seeking political asylum for up to 72 hours for the determination of credible fear and another fifteen working days for the stowaway to pursue his or her asylum application.⁶⁵

Needless to say, this can add up to quite an expense for carriers. Before the current rules were overturned by the Third Circuit, and the fifteen working-day limit imposed, *Dia Navigation Co. Ltd.* incurred \$127,580 for the detention of the stowaway in the early 1990's.⁶⁶ The discovery of stowaways is an expensive proposition for a carrier.

3. Murder of Stowaways on the High Seas

Ghanaian Kingsley Ofusu made headlines in Europe and Africa with his tale of murder on the MC RUBY in 1995. Ofusu and his brother Alberto boarded the MC RUBY in Ghana and found seven other stowaways onboard. The stowaways were discovered, and only Kingsley Ofusu managed to escape with his life. When he reported the crime upon landing in the French port of Le Havre, the Ukrainian crew was brought to trial. The vessel had been previously fined for stowaways, and the money was docked from the crew's wages, giving them a strong monetary incentive to murder the

⁶² *Id.*

⁶³ *United Brands Co. v. M.V. Isla Plaza*, 1994 WL 114825 (S.D.N.Y. 1994).

⁶⁴ *Id.* at 1.

⁶⁵ 8 C.F.R. § 241.11 (a)–(d) (2005).

⁶⁶ *Dia Navigation Co. Ltd. v. Pomeroy*, 34 F.3d 1255 (3rd Cir. 1994).

stowaways at sea. The captain and first mate of the MC RUBY were both sentenced to life in prison for the murders.⁶⁷

The United Nations has announced maritime regulations designed to protect stowaways, mainly by preventing them from boarding vessels at all. These types of cases are rarely reported, and it is very difficult to know how frequently the murder of stowaways occurs.⁶⁸

V. VOLUNTARY MARITIME SECURITY PROGRAMS—CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT)

The Customs-Trade Partnership Against Terrorism (C-TPAT) is a joint initiative between government and business, which aims to strengthen supply-chain safety and border security by building cooperative relationships. C-TPAT was developed as a voluntary program that was codified by the SAFE Port Act.⁶⁹ Businesses apply to participate by filling out an agreement that commits the company to the following: 1) conduct a comprehensive self-assessment of supply chain security using the C-TPAT security guidelines, 2) submit a supply chain security profile questionnaire to CBP, 3) develop and implement a program to enhance security throughout the supply chain in accordance with C-TPAT guidelines, and 4) communicate C-TPAT guidelines to other companies in their supply chain and work toward building the guidelines into relationships with these companies.⁷⁰

There are many benefits to participating in the program, one of the biggest being a more secure supply chain for employees, suppliers, and customers. Other benefits include reduction in inspections, an account manager, access to the list of C-TPAT members, access to account-based processes such as monthly payments, and an emphasis on self-policing as opposed to Customs verifications.⁷¹

If the application passes the initial evaluation, the applicant becomes a C-TPAT Partner, though the company must still pass a validation of its security program. Validations usually happen within the first three years of membership, and C-TPAT has expressed the goal of validating all members. Once the validation is complete, the

⁶⁷ *Focus-Stowaways find death on high seas*, GHANAWEB, Jan. 27, 2002, available at <http://www.modernghana.com/news/19959/1/focus-stowaways-find-death-on-high-seas.html>.

⁶⁸ Section 4 of the *Convention on Facilitation of International Maritime Traffic (in FAL Convention, "Standards and recommended practices for dealing with stowaway" have been adopted as an amendment that adopted on 10 January 2002, Entered into force on 1 May 2003. The amendments add new standards and recommended practices for dealing with stowaways.) and 2) Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases (Resolution A.871 (20) of IMO) (The guidelines in the resolution state that the resolution of stowaway cases is difficult because of different national legislation in the various countries involved. Nevertheless, some basic principles can be applied generally.)*.

Standards and recommended practices for dealing with stowaway: Section 4 of Convention on Facilitation of International Maritime Traffic (2002), Apr. 9 1965, 591 UNTS 265, http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=1852.

Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases: Res. A.871 (20), IMO (1997), <http://www.marisec.org/resources/IMO%20Stowaway%20Guidance.pdf>

⁶⁹ 6 U.S.C. §§ 961—973 (2006).

⁷⁰ BENEDICT ON ADMIRALTY, *supra*, note 37 at § 15.03[A].

⁷¹ *Id.* at § 15.03[A][2].

member will be presented with a Validation Report. If necessary, some or all of the member's benefits will be suspended until identified vulnerabilities are addressed.⁷²

The SAFE Port Act established three tiers of participants:

SEC. 214. TIER 1 PARTICIPANTS IN C-TPAT.

(a) **BENEFITS.**—The Secretary, acting through the Commissioner, shall offer limited benefits to a Tier 1 participant who has been certified in accordance with the guidelines referred to in subsection (b). Such benefits may include a reduction in the score assigned pursuant to the Automated Targeting System of not greater than 20 percent of the high-risk threshold established by the Secretary.

(b) **GUIDELINES.**—Not later than 180 days after the date of the enactment of this Act, the Secretary, acting through the Commissioner, shall update the guidelines for certifying a C-TPAT participant's security measures and supply chain security practices under this section. Such guidelines shall include a background investigation and extensive documentation review.

(c) **TIMEFRAME.**—To the extent practicable, the Secretary, acting through the Commissioner, shall complete the Tier 1 certification process within 90 days of receipt of an application for participation in C-TPAT.

SEC. 215. TIER 2 PARTICIPANTS IN C-TPAT.

(a) **VALIDATION.**—The Secretary, acting through the Commissioner, shall validate the security measures and supply chain security practices of a Tier 1 participant in accordance with the guidelines referred to in subsection (c). Such validation shall include on-site assessments at appropriate foreign locations utilized by the Tier 1 participant in its supply chain and shall, to the extent practicable, be completed not later than 1 year after certification as a Tier 1 participant.

(b) **BENEFITS.**—The Secretary, acting through the Commissioner, shall extend benefits to each C-TPAT participant that has been validated as a Tier 2 participant under this section, which may include—

- (1) reduced scores in the Automated Targeting System;
- (2) reduced examinations of cargo; and
- (3) priority searches of cargo.

(c) **GUIDELINES.**—Not later than 180 days after the date of the enactment of this Act, the Secretary, acting through the Commissioner, shall develop a schedule and update the guidelines for validating a participant's security measures and supply chain security practices under this section.

⁷² *Id.* at § 15.03[A][4].

SEC. 216. TIER 3 PARTICIPANTS IN C-TPAT.

(a) **IN GENERAL.**—The Secretary, acting through the Commissioner, shall establish a third tier of C-TPAT participation that offers additional benefits to participants who demonstrate a sustained commitment to maintaining security measures and supply chain security practices that exceed the guidelines established for validation as a Tier 2 participant in C-TPAT under section 215.

(b) **CRITERIA.**—The Secretary, acting through the Commissioner, shall designate criteria for validating a C-TPAT participant H. R. 4954—28 as a Tier 3 participant under this section. Such criteria may include—

- (1) compliance with any additional guidelines established by the Secretary that exceed the guidelines established pursuant to section 215 of this Act for validating a C-TPAT participant as a Tier 2 participant, particularly with respect to controls over access to cargo throughout the supply chain;
- (2) submission of additional information regarding cargo prior to loading, as determined by the Secretary;
- (3) utilization of container security devices, technologies, policies, or practices that meet standards and criteria established by the Secretary; and
- (4) compliance with any other cargo requirements established by the Secretary.

(c) **BENEFITS.**—The Secretary, acting through the Commissioner, in consultation with the Commercial Operations Advisory Committee and the National Maritime Security Advisory Committee, shall extend benefits to each C-TPAT participant that has been validated as a Tier 3 participant under this section, which may include—

- (1) the expedited release of a Tier 3 participant’s cargo in destination ports within the United States during all threat levels designated by the Secretary;
- (2) further reduction in examinations of cargo;
- (3) priority for examinations of cargo; and
- (4) further reduction in the risk score assigned pursuant to the Automated Targeting System; and
- (5) inclusion in joint incident management exercises, as appropriate.

(d) DEADLINE.—Not later than 2 years after the date of the enactment of this Act, the Secretary, acting through the Commissioner, shall designate appropriate criteria pursuant to subsection (b) and provide benefits to validated Tier 3 participants pursuant to subsection (c).⁷³

Participation in the C-TPAT is a continuing commitment. Action plans will be updated to reflect the commitments that were made during the application period. Failure to meet ongoing commitments may result in loss of benefits that will only be reinstated after the deficiencies have been remedied. It is also important to note that C-TPAT does not exempt Partners from the traditional CBP audit program, though a C-TPAT participant selected for Focused Assessment has the option of undergoing Importer Self-Assessment instead. In an Importer Self-Assessment, an importer is allowed a more affirmative role than in a Focused Assessment.⁷⁴

VI. INTERNATIONAL MARITIME SECURITY CONVENTIONS

A. United Nations Convention on the Law of the Sea (Third)

The United Nations Convention on the Law of the Sea (UNCLOS)⁷⁵ is an expansive multilateral treaty of 320 Articles governing all aspects of law regarding the sea, from rights of peaceful passage to the protection of the marine environment. Article 27 addresses criminal jurisdiction on board a foreign ship, allowing jurisdiction if the consequences of the crime extend to the coastal jurisdiction, the crime threatens the good order of the sea, the assistance of local authorities has been requested by the master of the vessel, or if such measures are necessary for the suppression of illicit traffic in narcotics.⁷⁶ Article 39 addresses a vessel's duties to avoid collisions and comply with international procedures for safety at sea. The U.S. is not currently a State Party to this convention.

B. United Nations Convention on the Safety of Life at Sea

The current United Nations Convention on the Safety of Life at Sea (SOLAS)⁷⁷ entered into force in 1980 and is generally considered the most important of the international treaties addressing the safety of merchant ships. The first SOLAS convention was adopted in 1914 in response to the Titanic disaster. The convention has been modified many times, most recently in 2008. The various chapters address standards for machinery, electrical installations, fire protection, life-saving appliances, radio communications, navigation, carriage of cargo and dangerous goods, and nuclear ships. In December of 2002 Chapter XI-2 on special measures to enhance maritime security was adopted. Section 5 requires that all vessels be outfitted with a ship security alert system by 2006. Section 6 covers requirements for port facility security assessments for Contracting Governments. Section 8 confirms that the Master shall not be constrained by any person or entity in exercising his professional judgment over

⁷³ SAFE Port Act §§ 214–216.

⁷⁴ BENEDICT ON ADMIRALTY, § 15.03[A][5].

⁷⁵ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (*entered into force* Nov. 16, 1994).

⁷⁶ United Nations Convention on the Law of the Sea, 16 Nov. 1994, article 27(1)(a)–(d), [hereinafter UNCLOS].

⁷⁷ Nov. 1, 1974, 32 U.S.T. 47, 164 U.N.T.S.113 (U.S. Treaty).

decisions about the ship's security.⁷⁸ SOLAS has the force of law in U.S. courts. *See In Re Damodar Carriers*, 903 F.2d 675, 1990 AMC 1544 (9th Cir. 1990).

C. International Ship and Port Facility Code (ISPS Code)

In December 2002, the International Maritime Organization (“IMO”) adopted additional Regulations containing a comprehensive set of measures to enhance the security of ships and port facilities in response to potential terrorist threats. The IMO conference was attended by 108 Contracting Governments to the 1974 SOLAS Convention. The Regulations increase maritime security through amendments to the SOLAS Convention, Chapters V and XI and were designated the International Ship and Port Facility Code (“ISPS Code”).⁷⁹

The ISPS Code is applicable to ships on international voyages and includes cargo ships exceeding the threshold of 500 gross tons, mobile shore off-shore drilling units, passenger ships including cruise ships and the various port facilities within its penumbra. The purpose of the ISPS Code is to develop a consistent approach for maritime nations to evaluate the risks for the vulnerability for ships and port facilities. Each assessment must (i) identify and evaluate critical infrastructures and assets of the port facility that could cause loss of life or damage to the environment or economy if damaged (ii) establish and assess vulnerability of the port facility, systems infrastructure utilities and other area (iii) to promulgate security-related information and (iv) to establish a unified approach for security assessments of ports. The ISPS Code requires ships to complete the following:

- Create ship security plans
- Establish security officers aboard ships
- Establish company security officers; and
- Maintain onboard security equipment
- Monitor and control access
- Monitor the activities of passengers and crew
- Insure ready available security communications

Port facilities are required to establish the following:

- A port security plan
- Establish port security officers
- Maintain security equipment
- Control and monitor access to the port, and
- Monitoring the activities of passengers, cargo and transportation workers

⁷⁸ United Nations Convention on the Safety of Life at Sea, 1 Nov. 1974.

⁷⁹ Chapter XI-2 (Special measures to enhance maritime security) of International Convention for the Safety of Life at Sea, International Ship & Port Facility Security Code and SOLAS Amendments 2002, IMO Publ'n No. I116E, (2003), <http://www.admiraltylawguide.com/conven/amendsolas2002.pdf>.

The United States has promulgated regulations to enact the provisions of the Maritime Transportation Security Act of 2002 and to comply with the domestic regulations of the Maritime Security Standard of SOLAS and the ISPS Code. The regulations are contained within Title 33 CFR parts 101-107.

D. Convention on Facilitation of International Maritime Traffic

The Convention on Facilitation of International Maritime Traffic (FAL) was adopted to prevent unnecessary delays in maritime traffic.⁸⁰ The convention provides a list of standard documents which public authorities can demand of a ship and recommends the maximum information and number of copies required. The International Maritime Organization has created standard forms for the General Declaration, Cargo Declaration, Ship's Stores Declaration, Crew's Effects Declaration, Crew List and Passenger List, and Dangerous Goods. There are two other forms that are required for which no standard form has been created.

In 1990 amendments were passed to add recommended practices for dealing with drug trafficking. The 1995 amendments are intended to modernize the Convention and included recommended practice for procedures for using pre-arrival and pre-departure information and to encourage electronic transmission of information. Those amendments also introduced references to the International Ship and Port Facility Security (ISPS) Code and the Convention on the Security of Life at Sea.

E. Convention for the Suppression of Illegal Acts Against the Safety of Maritime Navigation

The Convention for the Suppression of Illegal Acts Against the Safety of Maritime Navigation (SUA) was registered by the International Maritime Organization in 1992. The convention outlines several crimes against the safety of Maritime Navigation including seizing control of a vessel by force, acts of violence against persons onboard vessels, destruction of a vessel or maritime navigational facilities, placing a device or substance that may destroy a vessel onboard, and conspiracy to commit any of the enumerated crimes listed in Article 3. The remaining articles discuss jurisdiction requirements and the States Parties' duty to pass domestic laws outlawing the crimes in Article 3 and imposing appropriate sanctions.⁸¹

F. United Nations Convention Against Transnational Organized Crime

The United Nations Convention Against Transnational Organized Crime (Palermo Convention) was promulgated "to promote cooperation to prevent and combat organized crime more effectively."⁸² The Palermo Convention also includes three supplemental protocols. The first is the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children which calls for the international community to take aggressive measures to combat trafficking in women and children including the

⁸⁰ f) The Convention on Facilitation of International Maritime Traffic (FAL): http://www.imo.org/INFOrESOURCE/mainframe.asp?topic_id=835#01.

Convention on Facilitation of International Maritime Traffic: Apr. 9 1965, 591 UNTS 265.

1990 amendments (drugs trafficking): IMO, FAL.2(19); 1989 RTAF 34.

1995 amendments (general/pre-import information/pre-arrival clearance): IMO, FAL.5(24); SD 44:5 1996.

⁸¹ Convention for the Suppression of Illegal Acts Against the Safety of Maritime Navigation (1988).

⁸² United Nations Convention Against Transnational Organized Crime, 15 Nov. 2000, article 1.

confiscation of proceeds from trafficking and the criminalization of money laundering. The second supplementary protocol is the Protocol against the Smuggling of Migrants by Land, Sea and Air which was created to combat the smuggling of migrants and protect the rights of smuggled migrants. The final supplementary protocol is Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition. The protocol calls for States Parties to criminalize the illicit manufacture or sale of firearms, implement procedures for the confiscation and destruction of illicitly manufactured firearms, and to classify deactivated firearms as firearms.⁸³

VII. CONCLUSION

Maritime nations continue to implement stringent new security standards pursuant to statutes and international conventions. Within the past few years, maritime nations have become increasingly aware of the necessity for concerted endeavors uniformly to combat terrorism and piracy in maritime trade. As a result, the maritime industry is becoming increasingly regulated to protect national security of the ports of the United States and important maritime nations in the global economy.

⁸³ United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, 21 July, 2004.