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American Shipper

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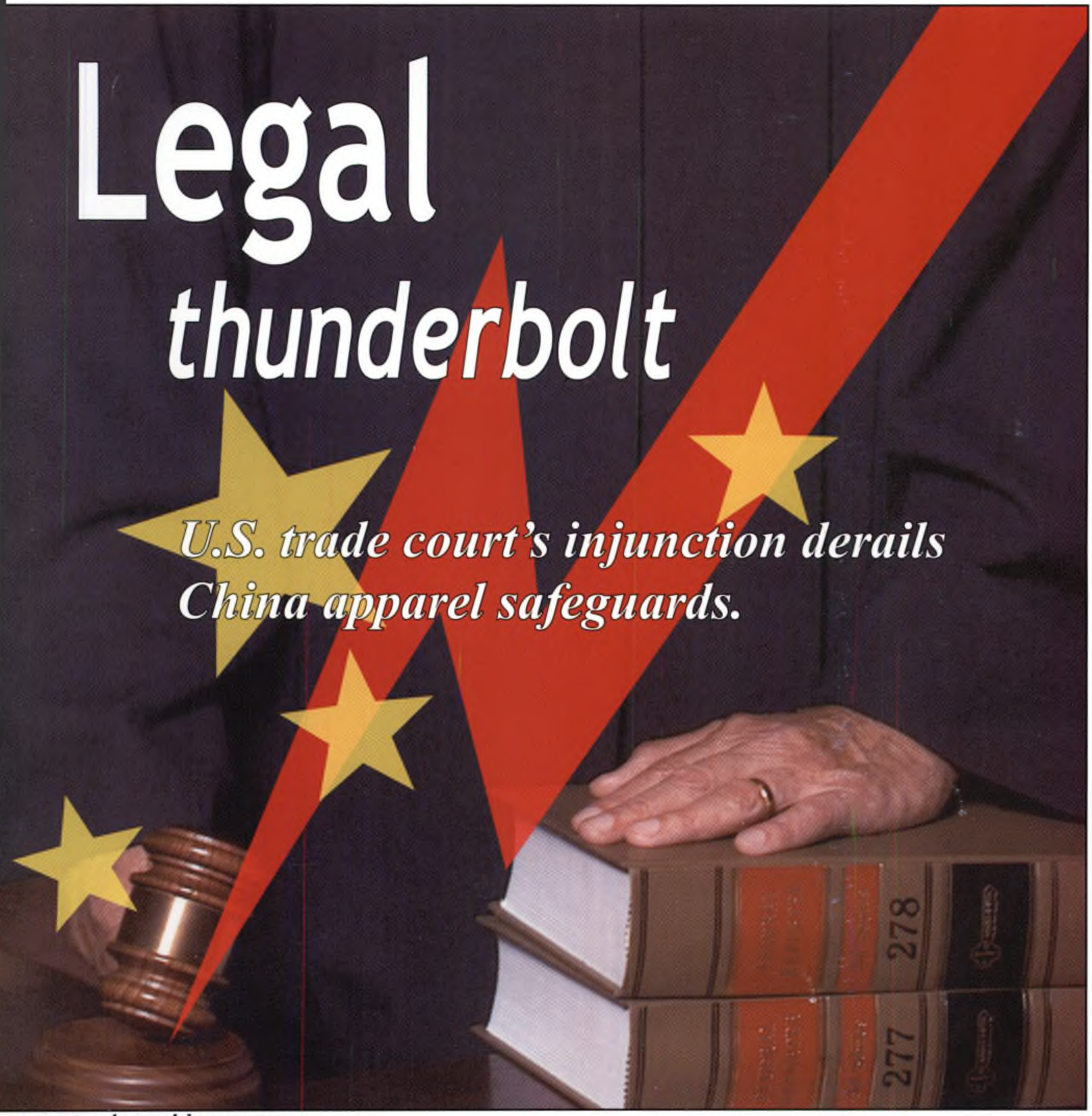
INTERNATIONAL LOGISTICS

Legal thunderbolt

U.S. trade court's injunction derails China apparel safeguards.



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American Shipper

Vol. 47, No. 2 — **February 2005**

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Legal thunderbolt — 8

All it takes is one judge to shake the trading world. An injunction issued Dec. 30 by the U.S. Court of International Trade temporarily blocked implementation of Bush administration safeguards on textile and apparel products from China. Ripples from the ruling in the little-known American court spread to anyone who makes or imports clothing.

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When it comes to U.S. export violations, exporters and freight forwarders are often quick to point fingers at each other. However, new federal regulations and electronic data-filing requirements taking effect this year promise to raise the level of compliance for both exporters and forwarders, thus making it more difficult for parties involved in an export transaction to pass the blame.

Trade Analysis: Eastern Europe - Russia — 22

In the first edition of American Shipper's *Trade Analysis series, our staff explores recent changes in Eastern Europe. In this analysis, logistics providers and manufacturers are seeing improved logistics after eight Eastern European countries joined the European Union. These new eastern markets have extended the port of Hamburg's reach. In Russia, however, the cargo clearance process struggles for a foothold.*

Portland to Portland — 76

Early last year, The Kroger Co., in a prescient move, switched its primary import gateway from the sprawling port complex in Long Beach, Calif. to the Port of Portland. Dollar Tree has since joined the supermarket chain, avoiding Southern California congestion, and their transloading operations flourish as big fish at the smaller Northwest marine facility. Portland hopes this augurs well for the future as it struggles to recaputure lost box trade.

comments & letters

Miyahara: Good news, bad news for 2005

Koji Miyahara, president of the NYK group, has cited many macro-economic forces affecting shipping and logistics, of which several are clearly negative.

In a New Year's message to staff, the senior Japanese executive outlined factors that have a favorable long-term impact on shipping, such as the growth of consumer spending, as well as adverse developments that generate risks and instabilities.

On the positive side, Miyahara said the rising number of consumers around the world will generate a steady demand for the transportation of goods.

The expansion of the "intermediate strata of consumers" over the past several years has been "particularly conspicuous in China," Miyahara said. "In other areas as well, such as other parts of Asia, Middle and Eastern Europe, and Latin America, the strata of intermediate consumers are expanding steadily."

As a consequence of this trend, cargo movements, including large quantities of consumer goods, resources, raw materials and food, are expanding on a global scale, according to the Japanese executive. He expects this trend to continue.

"It appears unlikely that the booming shipping market as we see it today will collapse drastically in the immediate future," Miyahara predicted.

On the negative side, he cited a forecast by the Organization for Economic Cooperation and Development that the growth rate of the world economy will slacken this year.

"Moreover, there are a number of disquieting factors for the NYK group, such as soaring prices for crude oil, fears of the dollar's depreciation and economic slowdown in the U.S. due to that country's deficits, and the problems of cooling the overheated Chinese economy and revaluing the Chinese currency," he said.

This sounded like rather a long list of potential negatives.

"We cannot afford to turn a blind eye to these developments," Miyahara said.

As suggested by NYK, the international shipping and logistics industries depend largely on what's happening to the overall global economy, particularly in the consumer sector, and on currency factors that boost or undermine many countries' exports and imports. *(Philip Damas)*

Zero out 'zeroing' in antidumping cases

An industry group with a focus on imported goods and consumers has rightfully asked the U.S. Commerce Department leadership to end the practice of "zeroing" when calculating antidumping margins.

Frankly, the practice is out of sync with acceptable world trade and regulatory practices.

The Washington-based Consumers for World Trade pointed out that zeroing artificially inflates antidumping by ignoring U.S. prices on any sales at prices higher than those made outside the United States.

The result, the group says, is either new or higher taxes on many U.S. imports.

"This practice is dishonest and harmful to consumers," said

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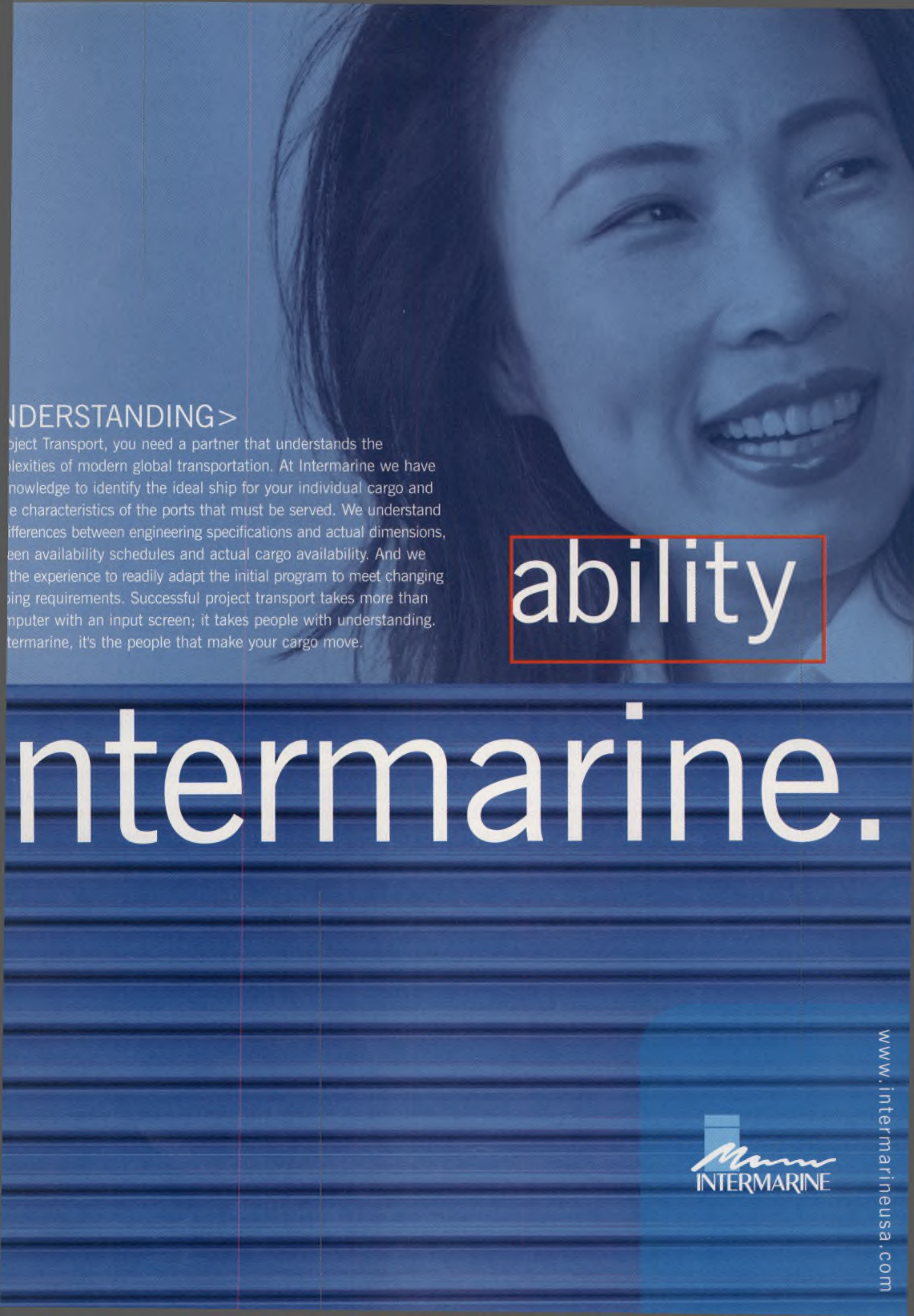

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Robin Lanier, president of the Consumers for World Trade, in a Jan. 5 letter to outgoing Commerce Secretary Donald Evans. "It inflates antidumping tariffs which are then passed along to the consumer in the form of higher prices."

The group pointed out in its letter that zeroing has been twice ruled illegal by the World Trade Organization and the European Union has already abandoned the practice.

In a recent U.S. antidumping case involving softwood lumber from Canada, the WTO ruled against the United States' use of zeroing. However, in a Dec. 20 letter to the Consumers for World Trade, Evans stated that since this ruling applied only to that one case, the Commerce Department would not stop using zeroing.

"Zeroing works the same way in every case, so every time the U.S. applies zeroing it is violating the WTO rules," Lanier explained. "The EU and Japan are already challenging the United States' use of zeroing in 37 prior cases. Thailand has already filed a challenge against the United States for its use of zeroing in the calculation of anti-dumping duties on exports of shrimp."

She added: "We are hoping that (Evans) will look closely at just how much damage his position is doing to U.S. credibility on trade and use his authority to make this vital change." *(Chris Gillis)*

Carriers oppose Panama Canal toll hikes

Ship operators are battling with the Panama Canal to prevent what seems to be inevitable: a big hike in toll prices.

In January, representatives of the international shipping industry told officials of the Panama Canal Authority that they regard their proposed increases in toll charges for containerships as unrealistic, excessive and opportunistic.

Officials of the London-based International Chamber of Shipping and the Washington-based World Shipping Council are engaged in a campaign by containership operators to oppose the Panama Canal Authority's proposed tariff increases for containerships.

Shipping companies say the contested increases to \$42, \$49 and \$54 per TEU would represent a 68.75-percent increase over current toll charges. The tariff also applies the charges in full, for the first time, to containers loaded on deck. Deck container capacity has been charged 8 percent of the regular toll tariff until now.

The Panama Canal Authority is changing its pricing structure from that of a government-controlled infrastructure provider to a "market-based" system.

This transition, unfortunately for the ship operators, means the Panama Canal will not be shy in raising its prices substantially, because the demand for the canal keeps growing and carriers have few other economic alternatives. Furthermore, the use of the North American landbridge has lost its competitive edge because of congestion in Californian ports and rail capacity shortages.

The International Chamber of Shipping urged the Panama Canal Authority to heed "the realities of the commercial process, and ... the acceptability to the consumer — in this case the canal user — of price increases which appear to owe less to justified need than to opportunism and an essentially captive market."

Yet, container shipping lines are in a weak negotiating position because of the growing demand from shippers to add Asia/U.S. East Coast services via the Panama Canal.

The proposed higher canal tolls are still not at a high enough level to cause harm to ship operators, exporters and importers. A toll charge of about \$80-110 per 40-foot container represents only about 5 percent of a shipping line's total cost per box.

But if the Panama Canal secures these big price increases, it will have a moral duty to expand the capacity of the canal.

Users of the canal are already reporting increasing delays. The Europe/South Pacific and Magellan conference of shipping lines reported that, during the second half of 2004, there was an average delay of 13.1 hours per transit through the canal. *(Philip Damas)*

GEA refutes reported position

In an article entitled "Express carriers unify" (December *American Shipper,* page 70), Eric Kulisch reported that "the Global Express Association would like to see express carriers be allowed to handle more traditional mail services while reserving the last-mile, universal service mission for postal authorities."

In fact, that is not the position of the GEA or any of its members, and that view was not expressed during any interview by *American Shipper* with representatives of GEA or any of its members.

John Simpson
director general
Global Express Association
Brussels, Belgium

When freight took flight

The History of Air Cargo and Airmail from the 18th Century, a book written by former Air France Cargo executive Camille Allaz, documents how the air freight business came to life and became a major industry.

Published by Christopher Foyle Publishing Ltd. (the same Christopher Foyle who runs the U.K-based heavy lift specialist company Air Foyle), this book starts with a description of balloons and dirigibles in France in the 18th century and ends with a report on the use of airplanes in the 2001 terrorist attacks in New York and Washington, D.C.

Did you know that air cargo is nearly a century old, or that the first aircraft cargo flight was in 1910? This book will provide useful reference information on topics little or well known.

A section is dedicated to the inception of express freight companies such as FedEx, DHL and TNT.

Another chapter shows that mail accounted for 68 percent of the world's total mail and freight traffic in 1938, but that the rise of air freight reduced the share of mail traffic to just 20 percent by 1951.

The book meshes the history of air freight with the political and economic environment of the times, such as the currency instability of the 1980s and the 1970s-1980s oil crises that marked the end of cheap energy — two topical subjects today. A graph included in this book shows that fuel costs accounted for 12 percent of total airline costs in 1966, 19 percent in 1974

and 30 percent in 1981, before falling back.

The book relates the three principles followed by Frederick Smith to support the operating concept of FedEx, and notes that his father owned a bus company, not an airline.

Allaz first wrote a history of air cargo and airmail in 1998 in his native language — French — before he embarked on an updated English-version of the book that makes this comprehensive history of air cargo accessible to more people. The book was published in association with the International Air Cargo Association (TIACA) with the ISBN reference I 902579 82 8. *(Philip Damas)*

Nannies and homeland security

The private woes of would-be U.S. Homeland Security Secretary Bernard Kerik are well documented.

His appointment was derailed by his acknowledgement that he had hired an undocumented alien as a nanny and hadn't paid his portion of her federal taxes, as required by law. By the time he withdrew his name from consideration, the press was already in full dig into his sordid past, which included at least two mistresses.

Oh, the dinner conversations Kerik and British Home Secretary David Blunkett could have had if they were both in office. You haven't heard of David Blunkett?

His case, for obvious reasons, received less coverage in the U.S. media, but it has a familiar stench. Blunkett, you see, was in charge of Britain's homeland security and his portfolio included immigration matters.

Last year, British newspaper reports alleged that Blunkett, who is divorced, intervened to speed up a permanent visa application for his married lover's Filipino nanny.

Blunkett was undone after his three-year affair with Kimberly Quinn, the American publisher of the conservative *Spectator* magazine, ended and he tried to establish that he was the father of her two-year-old son and unborn child.

The report about the nanny first appeared in a paper owned by Quinn's husband, leading to speculation that she was the source of the story in an effort to put an end to his paternity claim.

Blunkett denied he exerted any political influence and said he was honorably using the visa application to test the extent of visa delays in the immigration service. Blunkett eventually resigned in December as public pressure increased.

Government officials are entitled to private lives, but they can't go around making a mockery of the very laws they are entrusted to uphold. In today's post-world, controlling who enters the country is a national security issue. Blunkett undermined British immigration policy. It's a good thing Kerik was never given the chance to do the same. (*Eric Kulisch*)

Air cargo vulnerable to political rhetoric

As illustrated in Eric Kulisch's commentary, "Cargo security and the campaign" (December American Shipper, page 2)

politicians are exploiting the naivete of the public, spewing negative rhetoric about a topic they know nothing about.

One of the biggest drawbacks the air cargo industry faces is the lack of understanding from those outside the industry (especially politicians) about the supply chain and its vulnerability toward acts of terrorism. Many people unfamiliar with cargo handling wrongly try to equate passenger and baggage vulnerability to cargo vulnerability.

Politicians compare passenger handling to cargo because they lack the basic understanding of cargo handling and therefore their perception is easily influenced by those outside the industry. Air cargo networks tend to be harder for terrorists to exploit because terrorists don't know when a shipment will actually move out from a storage facility and they can,t be assured specific freight will move on a targeted carrier or get bumped.

The economic impact of the Transportation Security Administration's new air cargo proposal far outweighs the perceived safety these regulations represent.

Robert F. Caton
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That time, again

One sure sign the holidays are over is when you start sifting through a pile of wall calendars for the new year, sent by business contacts who no doubt hope (in vain) that a better-organized career will further advance their interests. Some of these calendars offer exhortations each week.

The most honest of the lot is called *The Best of Demotivators,* published by Despair Inc. Several of the axioms here resonate in the transportation and logistics business:

- For a strikingly beautiful seascape, marred only by the sinking bow of a sundered containership, the caption reads, "It Could Be That the Purpose of Your Life Is Only to Serve as a Warning to Others."
- Certain CEOs contemplating outsourcing probably have on their own walls the print that reads, "Sometimes the Best Solution to Morale Problems Is Just to Fire All of the Unhappy People."
- Purveyors of information technology who must constantly explain their software to doubters will relish a poster called "Cluelessness" which says, "There Are No Stupid Questions, But There Are a Lot of Inquisitive Idiots."
- The entire calendar recalls perhaps the best security advice, credited to Arapaho Native Americans: "Never wear earmuffs in the land of the rattlesnake." *(Robert Mottley)*

Bad metaphor

Talk about your unfortunate choice of words.

On the morning of Dec. 26, the day after Christmas, the Dubai Ports and Customs authority sent the following Happy New Year's message to members of the international trade community just minutes before an undersea earthquake in the Indian Ocean triggered a massive tsunami that devastated 11 countries:

"May 2005 mark the beginning of a tidal wave of love, happiness and bright futures," the greeting said. *(Eric Kulisch)*

Correction

A forecast in the January issue ("Maritime lawyers have full plate," page 10) incorrectly identified a classification society. The name of the society is Lloyd's Register.

Legal thunderbolt

U.S. trade court's injunction derails China apparel safeguards.

BY ROBERT MOTTLEY

All it takes is one judge to shake the trading world. An injunction issued Dec. 30 by the U.S. Court of International Trade temporarily blocked implementation of safeguards by the Bush administration on textile and apparel products from China.

In China, Taiwan, India, Bangladesh, Turkey and Indonesia, as well as across Europe and the United States, news of the court order scrolled repeatedly on television screens otherwise filled with scenes of devastation caused by tsunami.

By mid-January, it had become clear that economic ripples spreading from a single judge's injunction in a little-known American court will eventually affect anyone who makes or imports clothing.

Case At Hand. As part of China's accession agreement to the World Trade Organization (WTO), the United States may impose safeguard measures through Dec. 31, 2008, on the otherwise unrestricted importation of textile and apparel products of Chinese origin, if such goods create enough market disruption to impede the orderly development of domestically made competitive products. Such measures are called "textile-specific" safeguards.

The United States may also impose, through Dec. 13, 2013, safeguard measures on *any* imported products of Chinese origin, including textiles and apparel, when they cause or threaten to cause such market disruption. Those measures are called "product-specific" safeguards.

Any decision to impose such safeguards is handled by the executive branch of the U.S. government. Congress has expressly delegated the administration of product-specific safeguards, including the right to self-initiate an investigation, to the U.S. International Trade Commission (ITC).

However, Congress has not addressed the administration of textile-specific safeguards. Since 1972, as provided by the Agricultural Act of 1956 (7 U.S.C. 1854, section 204), U.S. presidents have delegated the supervision of textile matters to the Committee for the Implementation of Textile Agreements (CITA).

CITA is an interagency panel comprising representatives from the departments of State, Treasury, Commerce and Labor, and from the Office of the U.S. Trade Representative. The current chairman of the committee is James C. Leonard, U.S. deputy assistant secretary of commerce for textiles and apparel.

In May 2003, CITA published rules and procedures pertaining to requests for textile-specific safeguard actions on Chinese textile and apparel imports. As was CITA's habit, the rules were announced in final form, without advance notice or an opportunity for public comment. CITA does not hold public meetings, nor does it reveal how its five members vote.

Under its rules, when CITA receives a petition requesting a textile-specific safeguard, it has 15 working days in which to accept or reject the petition. If CITA accepts a petition within that period, a 30-day period for public comment follows.

That comment period is followed by a 60-day period in which CITA considers the evidence, and determines whether there has been market disruption as a result of Chinese imports, thereby justifying the imposition of a safeguard measure.

If CITA's answer is yes, the United States then asks for consultations with China. The tendering of a request for such consultations automatically triggers a quantitative restriction for up to one year on the Chinese product cited in a petition made to CITA.

In early September 2004, CITA began to contradict the rules it had established in May 2003, saying it could accept requests for safeguard relief that were based solely on the threat of market disruption caused by a possible future surge of imports.

Beginning Oct. 8, 2004, several groups representing U.S. domestic textile manufacturers filed petitions with CITA against various kinds of Chinese apparel.

The petitions, based on predicted but unproved threats of market disruption, came from the National Council of Textile Organizations (NCTO), the National Textile Association (NTA), the National Association for the Sewn Products Industry (SEAMS), the American Manufacturing Trade Action Committee (AMTAC), and the labor union UNITE HERE!

CITA subsequently accepted their petitions, even though the targeted Chinese textile and apparel products were subject to quotas that dropped away on Dec. 31. That contravened CITA's prior rules, which stipulated it could not accept petitions involving products under quota.

The petitions from U.S. "domestics" made to CITA in the fall of 2004, if enacted, would likely extend until 2008 most of the restraints on China's apparel and textile imports that ended Dec. 31, when a 40-year regime of quotas expired for all WTO members.

As CITA began accepting petitions from domestic apparel groups, the U.S. Association of Importers of Textiles and Apparel (USA-ITA) sued the federal government in the Court of International Trade, based in New York. USA-ITA asked the court to temporarily block any implementation of the safeguard petitions, and to determine if CITA had authority to administer the terms of a WTO accession agreement.

Court Developments. During oral arguments heard in the court Dec. 20, Senior Judge Richard W. Goldberg sharply questioned Michael Panzera, an attorney for the U.S. Justice Department representing CITA.

"One might think that CITA ought to be a little bit consistent," Goldberg said at one point.

"Your Honor, there is no inconsistency," replied Panzera, who asserted CITA had broad authority from Congress to act as it wished, even if that meant changing its prior rules without notification.

Goldberg repeatedly told Panzera during the government's oral argument that CITA's stance toward importers could be characterized "as holding a gun to their head, but not pulling the trigger." The court asked Brenda Jacobs, an attorney for USA-ITA, for "hard evidence of hardship" that CITA's acceptance of threat-based petitions might have caused apparel importers.

In subsequently granting the injunction sought by USA-ITA (U.S. Court of International Trade Slip Opinion 04-162, docket number 04-00598), Goldberg noted, "the plaintiff asks the court to enjoin CITA from further accepting, considering, or otherwise proceeding with requests for safeguard measures based on a threat of market disruption."

Although proof of economic loss by itself would be "insufficient to justify preliminary injunctive relief ... the court finds that plaintiff has shown much more than just economic loss. Because of CITA's mere acceptance of threat-based requests, plaintiff's members have found it prudent to cancel or consider canceling orders in China and move them to other countries where possible," Goldberg said.

"However, it has been difficult for plaintiff's members to find suitable substitute factories because other importers are also scrambling to secure alternative production facilities. This difficulty is exacerbated by the unrefuted fact that Chinese factories generally have fewer audit failures, ensure more on-time deliveries, employ highly skilled workers, and operate some of the most efficient production facilities in the world.

"By being forced to move production to less efficient factories in other countries, plaintiff's members face the real possibility that they may not be able to deliver products to their customers in a timely manner. This constitutes irreparable injury," Goldberg said.

"In addition, plaintiff's members' inability to stock shelves in a timely manner will create an unquantifiable ripple effect, as shortages of merchandise in one category can affect sales in other categories. Moreover, because of the slower production and transit times from countries other than China, plaintiff's members are finding it necessary to place orders earlier than they normally would. This in turn inhibits ... (the importers') ability to respond to trend-specific demand, thereby creating an unquantifiable inventory risk," the court noted. "All of this constitutes irreparable injury as well."

Injunctive relief "will not impede CITA's ability to impose textile-specific safeguards," Goldberg said. At the conclusion of his decision, he indicated some possible contours of the legal trail ahead, should USA-ITA's case against CITA proceed in the Court of International Trade.

"In its complaint, plaintiff has raised an important question as to whether CITA's delegated authority to administer textile agreements includes the authority to issue regulations pursuant to China's Accession Agreement ... If plaintiff is fully successful on the merits of the case, CITA's China Textile Safeguard Regulations will be invalidated in toto ... " Goldberg said.

"In addition, plaintiff's complaint alleges that CITA has exceeded its delegated authority by assuming administration of the textile-specific safeguards without a clear Congressional mandate to do so ... CITA's ability to administer the terms of a WTO accession agreement is a novel question — both as a matter of first impression, and in light of express Congressional action to delegate the administration of other aspects of China's (WTO) Accession Agreement to the International Trade Commission. Given the seriousness of these questions presented, a preliminary injunction is justified in this case," he concluded.

"In all of this, there is also a warning to CITA that it overstepped by accepting threat-based petitions before any market threats could be plausibly and factually proven."

The Court of International Trade's injunction took most legal experts by surprise, and apparently stunned CITA. In the first weeks of January, CITA did not rescind its announced periods of gestation for the domestic petitions, appearing to ignore Goldberg's ruling.

Although outraged U.S. "domestics" urged an expedited appeal of the court's injunction, the Bush administration did not rush to do so.

That initial delay sent several signals, according to one attorney who regularly appears before the Court of International Trade.

"Goldberg has done the Bush administration a favor," the attorney said. "The U.S. doesn't really want to antagonize China. The court's injunction allows the White House to tell U.S. textile and apparel manufacturers 'well, we tried to help you, but the judge stopped us.'

"I think there is also a signal being sent to China. After the injunction, the U.S. is saying to China, 'here's a short grace period to get your act together — police your own industries, and don't wreck havoc in U.S. markets.' I believe the Chinese will take their cue accordingly," the attorney said.

"In all of this, there is also a warning to CITA that it overstepped by accepting threat-based petitions before any market threats could be plausibly and factually proven," the attorney said.

So the New Year begins with U.S. apparel importers getting what they've wanted — barring a successful appeal of Goldberg's injunction — a period of time, perhaps six months or longer, until their case in the Court of International Trade is concluded, to see if China-spawned market disruptions actually occur in the United States.

Courting trade justice

U.S. Court of International Trade's role has expanded.

The U.S. Court of International Trade started as a board of appraisers in 1890 to rule on duties pertaining to imports. Until 1956, it was a customs court, which only had jurisdiction over valuation and classification of imported goods that came into the port. The court was given jurisdiction over international trade in 1980.

"We're sort of a hybrid court," Judge Richard W. Goldberg told *American Shipper* in an interview.

"The main reason the court was located in New York was because that city was once the preeminent port in the U.S.," Goldberg said. "My personal view is that the court should be in Washington, D.C. The agencies for which we get appeals today are located there, as are most of the lawyers who represent the litigants. However, the Court's location has been determined by statute, and I don't expect that to change."

The court's purpose is to deal with problems arising from international trade litigation, which has flourished since the nation's earliest days. In fact, the first case tried before the first judge appointed to the first court organized under the U.S. Constitution involved a dispute arising from an importation.

Today, the president appoints and the Senate confirms nine judges who form the Court of International Trade. At present, there is a chief judge, seven judges, and four senior judges.

The court is a national court established under Article III of the Constitution. All of the court's judges are appointed for life. They may also sit, when designated, on U.S. courts of appeal or federal district courts.

U.S. Sen. Dennis DeConcini, a prominent sponsor of the Customs Courts Act of 1980, defined the rationale for the Court of International Trade as follows: "This legislation will offer the international trade community, as well as domestic interests, consumer groups, labor organizations, and other concerned citizens, a vastly improved

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forum for judicial review of administrative actions of government agencies dealing with importations."

The Court of International Trade has dealt in recent years with notable cases involving harbor maintenance taxes and steel imports. It hears a number of dumping and countervailing duty cases involving products imported to the United States and sold allegedly for less than fair market value, thereby inflicting economic injury on U.S. industry competing with the same kind of products.

For example, when the Japanese started shipping minivans into this country, Ford, General Motors and Chrysler alleged Japanese importers were selling the minivans for less than fair market value.

In customs cases, "there are trial situations with opposing sides and witnesses, but they are always before one judge. We don't have jury trials," Goldberg explained.

"In the trade area, we sit as separate judges because we are considered as a lower court," he said.

If there's a serious constitutional question, which seldom happens, then a three-judge panel from the court would hear the case.

"We don't have a lot of wiggle room in trade law in dumping and countervailing duty cases. All we can do is to disagree with the procedures followed by the Commerce Department and the International Trade Commission," Goldberg explained.

"The Commerce Department decides whether it is a dumping case, and what the percentage of duties should be for a product to make it equal to what it should be from a sales standpoint in this country," he said.

Then, the matter moves to the ITC, "which applies the economics to find out if there's actually injury," Goldberg said.

The ITC can say, "it may be dumping, but we don't find any injury to U.S. industries." Those matters are then appealed to the Court of International Trade, and then from there to the Federal Circuit.

"We can sustain the findings, or we can say that their methodology was wrong and remand a case to the agency involved, which is typically what happens," he said.

"We can also decide whether an agency had jurisdiction, or correctly followed due process. Some of those cases go on for years."

Cases appealed from the Court of International Trade are heard by the Court of Appeals for the Federal Circuit in Washington, D.C.

"Only about 5 percent of that appellate panel's caseload involves the customs/trade area responsibilities from this court," Goldberg said.

The Court of International Trade has been under the radar since its inception, being mentioned only occasionally in the media "because most people don't find what we do very newsworthy," he explained.

"When I talk to law students, I tell them that virtually no one 'out there,' including most of the country's lawyers and judges, have any idea of what we do — if they've heard of us at all.

"There's a reason for that. The number of lawyers who practice before this court is relatively small, because the court's jurisdiction is narrow," he explained.

"Most of the so-called 'blue-chip' major law firms in New York City deal with us through their offices in Washington, D.C., where their trade lawyers tend to be located," Goldberg said.

"There's also a specialized group of law firms, mostly in New York, that do mainly customs and some trade work. They tend to appear almost exclusively in this court," the judge noted.

"The reason our court is considered 'tough' is because trade cases are very complicated and difficult."

Senior Judge Richard W. Goldberg
U.S. Court of International Trade

"I would say that only about 150 attorneys appear before the Court of International Trade, drawn from about 30 or 40 law firms," said Joel K. Simon, a partner in Serko & Simon LLP in New York.

Simon's firm deals entirely with customs and international trade law cases. He finds the court to be "a lovely venue — and I've had cases there for 36 years."

Other attorneys quail at the prospect of appearing before the trade court's judges, who are said to be a demanding lot.

One lawyer told *American Shipper,* "it isn't a 'cakewalk court.' You'd better be prepared, or you'll be skinned."

"The reason our court is considered 'tough' is because trade cases are very complicated and difficult," Goldberg said.

The court's set-up is always one of plaintiffs vs. the government. "Plaintiffs never appear against each other in the trade court. Our cases are always against the government," Simon explained. "Often, plaintiffs will join in support of other plaintiffs."

"I would say that judges on the Court of International Trade tend to rule in favor of the government, but certainly not all of the time. On many occasions, plaintiffs receive the relief they seek. And when the judges are convinced of wrong-doing, or of an agency overstepping its authority, they will take corrective measures," Simon noted.

Within the court's offices at One Federal Plaza in lower Manhattan, judges often discuss aspects of their cases with colleagues, Goldberg noted.

"I'll ask another judge on the court about an isolated issue in one of my cases, if that judge has been around longer than I have," he said.

The atmosphere is collegial. "I respectfully disagree with some of my colleagues on certain issues, and I sometimes don't follow what they've done, because I see the issue differently," Goldberg said. "I haven't noticed any ideological differences among the trade court's judges. Nor is there any political partisanship. Our judges have been nominated by presidents who were Republicans and Democrats."

The court's chief judge, Jane A. Restani, assigns cases to seven judges besides herself, and to four senior judges.

Asked if a judge could refuse one of Restani's assignments, Goldberg said "that doesn't happen very often. You usually take what you get.

"Not always, but usually, you are assigned cases in an area in which you've built up some background or expertise."

Exercising flexibility, Restani mixes and matches cases among the trade court's judges. "We've moved a little way from 'topic specific' judges, which I think is the right approach, so that other judges will hear cases in a particular area," he said.

Otherwise, litigants on textile cases would know they'd have Goldberg for a judge as long as he lives.

"I don't think that's good for Goldberg, nor for the litigants," he chuckled.

Many of the opinions rendered by the Court of International Trade are sealed to the public.

"In the trade area, especially in a dumping case, you have a great deal of confidential data, say from a Japanese steel manufacturer. You'll have production records, costs and confidential financial information," Goldberg said.

In the case of USA-ITA vs. the United States, Goldberg issued an order sealing affidavits from apparel importers.

"That protects litigants and also insures that both sides will be candid, otherwise you would never find out what you as a judge need to know," he explained.

Asked if an injunction had ever been issued previously to restrain CITA's alleged overreaching, Goldberg replied, "as far as I know, not in this court."


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View from the bench

Goldberg places himself and his rulings, 'on solid ground.'

Judges reach decisions in varying ways. For Senior Judge Richard W. Goldberg of the Court of International Trade, "You have to consider case law. Then you're on solid ground. There are two sides to that. You can't always rely on what lawyers put in a brief when they cite cases.

"It's the judge's responsibility, if the lawyers don't mention it, to find out if those cases actually support one side or the other, or the side where the judge thinks the case ought to go," Goldberg said.

"If you don't see a lot of case law in a brief, or in a judge's opinion, it's because there simply isn't any, as far as relevant issues in the situation at hand," Goldberg said.

Asked if judges liked to venture where no one has gone before them, Goldberg replied, "It's a tricky deal. I'm not one of those judges who worries about what the federal circuit is going to do to me on appeal. I do the best job I can. I call it the way I see it, and I'm comfortable with that.

"Most of my cases have been affirmed by the appeals court. Yet I have also been reversed," Goldberg explained. "I can say that sometimes I could see where appellate judges who overturned my decisions were coming from, and I might even be inclined to agree with them."

Asked if judges preferred to see familiar faces before them, Goldberg said, "the first thing I ask my law clerks when a case hits my chambers is 'who are the lawyers?' When a judge sees a familiar face, he or she usually will remember how well-prepared — or not — the person was during a prior appearance."

Attorneys are creatures of habit. Sharp ones remain savvy. Dull ones are not likely to suddenly sparkle. The barely prepared tend to be habitually badly prepared.

"There are lawyers you can rely on. Others give very little help, either because they haven't dug into case law or they are just not forthcoming by nature," Goldberg said.

When a judge is confronted by a personally obnoxious lawyer, "you have to work extra hard to be fair," he admitted.

"That doesn't happen here as much as when I sit by designation in federal district courts. There, you have discrimination cases, almost like a family court, where everyone is mad at everyone else."

If, on occasion, an attorney tries to bait Goldberg, or veers into disrespect, "I'll correct the situation before it goes any further," he said.

"I usually do that 'at sidebar' in a district court," he said. Depending on the offense, "I could tell them that 'I don't want you to circumvent previous rulings in this court, or try to do with me what you couldn't do someplace else. It's not going to work. You're wasting my time trying.'

"As a judge, you never want to lose control of the courtroom. You don't want lawyers to take over. Some of them will try. That doesn't happen very often in the Court of International Trade," Goldberg said.

"In the trade court, I tell the lawyers before me that if I interrupt them or start asking pointed questions, they certainly shouldn't take it personally," he said. "My role is to try to extract as much information from them as I need in order to reach a fair and just decision."

"I don't let my emotions get in the way of what I think the law is, he said. For example, in a criminal case, I might really think that the accused should be acquitted, that whatever he or she had done was justified on a personal basis. But more often than not, that isn't the way the evidence and the law is set forth, and I have to follow the law."

Judges have been known to assign one law clerk the plaintiff's side in a case, and another law clerk the defendant's side. After the clerks privately argue the case in chambers, the judge will rule along the lines of the winning law clerk's argument.

"Personally, I don't care for that kind of approach," Goldberg said.

"When I hire law clerks, I say to them, 'I don't want a rubber stamp. In fact, I listen to my law clerks' reasoning based on the research they've done, and how their arguments come out. That doesn't mean it's necessarily the way I'm going to go in my decision."

Every other year, Goldberg holds what he calls "an alumni reunion" for former law clerks at his home in northern Virginia.

Goldberg is known for one unusual trait of behavior. When his court adjourns, after the call "All rise," he will step down into the well of the courtroom, greeting lawyers as well as anyone who wants to linger on the public side of the rail.

That kind of schmoozing is also habitual for judges on the Fourth Circuit Court of Appeals, which sits in Richmond, Va.

"It's my nature," Goldberg said. "I like people. In a federal district court, I'll visit with jurors after the trial.

"When I greet people in my court after an oral argument, I never talk about the case. It's always small talk. I like to fraternize that way."

Goldberg, 77 born in Fargo, N.D. Goldberg's father, Jacob, was in the grain business. After graduating from the University of Miami, Goldberg had three years of active duty as a captain the U.S. Air Force JAG, including a year's stint in Thule, Greenland.

From 1966 to 1974, Goldberg served two terms in the North Dakota Senate. "One thing I took away from the state senate was an understanding of different social agendas between rural areas and cities. As a Republican, I did better with Democratic senators across the aisle who represented cities, than I did with rural members of my own party.

"We were not bitterly bipartisan. I believe even today that 95 percent of the laws most states pass don't provoke partisan fights.

"I learned early on not to take legislative defeats personally, or attack people who voted against bills I'd proposed. It's a small world in North Dakota politics, and the very next day, you might need the support of folks you had just alienated."

During his state senate years, Goldberg became president and chief executive officer of a regional grain processing firm, and eventually vice chairman of the board of the Minneapolis Grain Exchange.

In the terms of President Ronald Reagan, Goldberg served in the Department of Agriculture as Deputy Under Secretary for International Affairs and Commodity Programs, and later as Acting Under Secretary.

He participated in the formulation of the 1985 Food Security Act, and the 1988 Omnibus Trade Act, as well as in the early stages of current free trade agreements, including NAFTA.

While at the USDA, Goldberg testified more than a hundred times before Senate and House committees.

While working as of counsel for the firm of Anderson Hibey Neuheim and Blair, Goldberg was nominated by President George H.W. Bush to be a judge on the Court of International Trade. The U.S. Senate confirmed Goldberg in March 1991.

Goldberg actively promulgated his appointment to the International Court of Trade. "You need influential mentors who will speak on your behalf in Congress to advance your candidacy.

"I'm not one of those judges who worries about what the federal circuit is going to do to me on appeal. I do the best job I can. I call it the way I see it, and I'm comfortable with that."

Senior Judge Richard W. Goldberg

"When I knew there was a vacancy on the court, I thought this was an area of the law that I was interested in because I had practical and technical experience."

"I was older than most judges when I came to the bench at the age of 63. That's unusual, because most judges are appointed in their 40s and 50s.

"My broad experience before serving as a judge has given me instincts that enable me to ask questions of the attorneys in my court. I give them a list beforehand, and make sure during oral arguments that they answer them. I don't do that to embarrass the lawyers, but to provide the answers I need to hear before I make my decision," he explained.

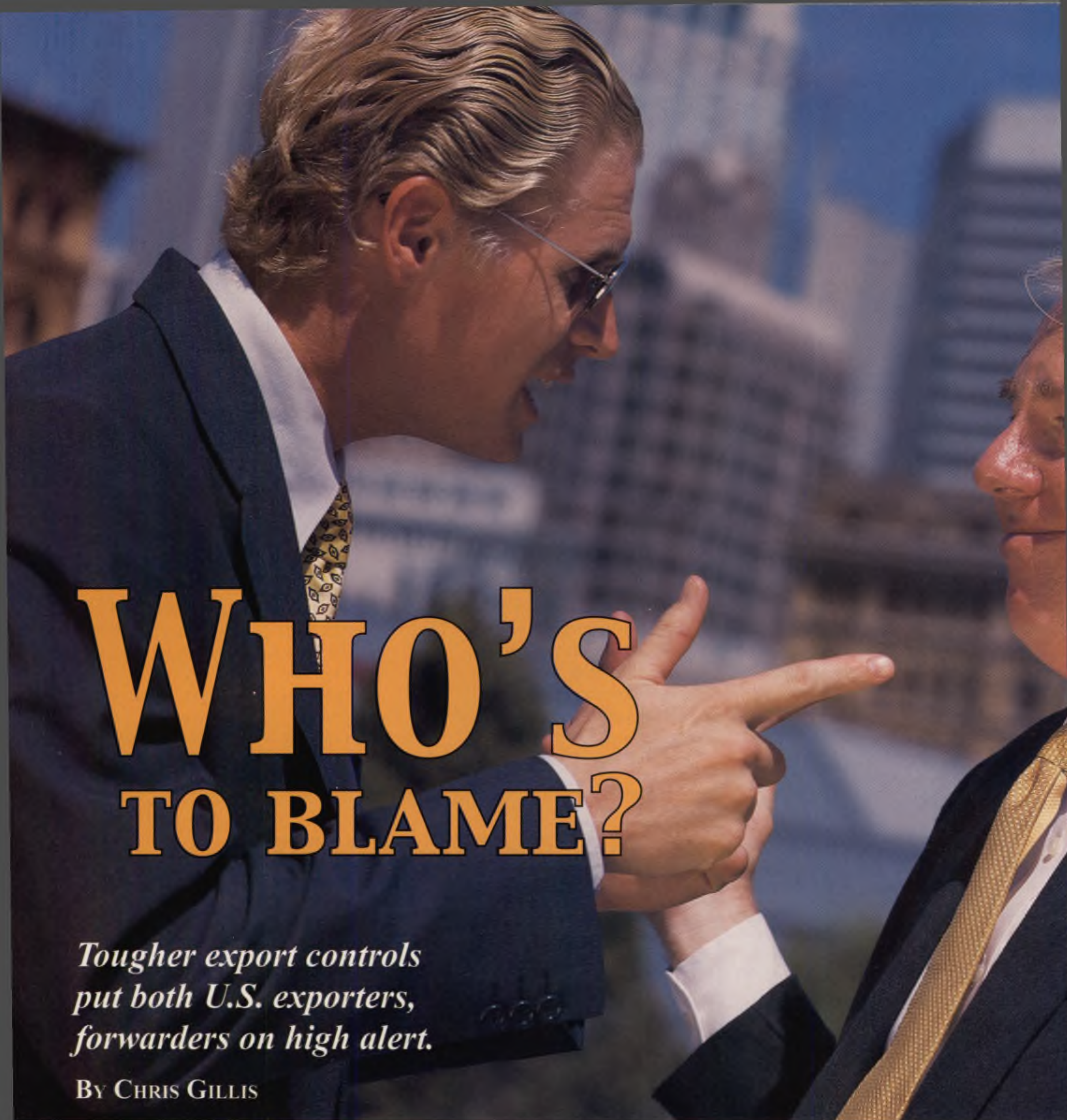
Over the years, Goldberg has handled "literally hundreds of customs and trade cases," he noted. He has also sat, by designation, on the Second, Third, Fifth, Eighth and 11th Circuit Courts of Appeals.

Goldberg has also served as a federal district judge in Fargo, Grand Forks and Bismarck, N.D., and in the Southern District of Florida in Miami.

Asked why he doesn't retire, Goldberg said that "of my friends who are still living at my age and not working, I've found that they are the ones with the keenest interest in when I'm going to hang it all up and stay home to watch television.

"I keep going as a judge because I love the work. I'm fortunate to be active in three judicial arenas. I enjoy the variety of all three venues."

In private life, Goldberg loves vintage convertibles. He plays jazz and popular music on the piano, and says his golf game is still a work in progress. ■



WHO'S TO BLAME?

Tougher export controls put both U.S. exporters, forwarders on high alert.

BY CHRIS GILLIS

When it comes to U.S. export violations, exporters and freight forwarders are often quick to point fingers at each other.

However, new federal regulations and electronic data filing requirements taking effect this year promise to raise the level of compliance for both exporters and forwarders, thus making it more difficult for parties involved in an export transaction to pass the blame.

"Since a forwarder is an extension of the exporter, compliance may extend to both entities when wrongdoing occurs" said Paul DiVecchio, president of DiVecchio & Associates, in a recent interview. "The days of dump and run should be coming to an end."

DiVecchio

The 2002 Security Assistance Act lays the groundwork for more rigorous compliance demands on exporters and forwarders by requiring that all outbound shipment data be processed in the government's Automated

Export System (AES). This information, in turn, is made available to agents from both the Commerce Department's Bureau of Industry and Security and the Department of Homeland Security's Customs and Border Protection (CBP) for enforcement purposes. The Census Bureau's Foreign Trade Division, which uses the data in AES and paper shipper's export declarations (SEDs) to compile the nation's trade statistics, will also play a bigger role in ensuring industry compliance with the export regulations. Those companies that fail to comply risk heftier fines and penalties, in addition to bad publicity.

"Everything associated with exporting is being forced into an electronic environment by AES," said Mark Menefee, counsel for Washington law firm Baker & McKenzie. "Once that gets implemented, the liability exposure for both exporters and forwarders goes through the roof."

Until the passage of the Security Assistance Act, AES was a voluntary system. Since the system's implementation in the late 1990s, exporters and their forwarders have increasingly moved away from filing paper SEDs to automated filings for better operational efficiency.

Horner

While AES has built-in edits to detect missing or wrong information, Census continues to receive rejected and untimely electronic submissions from the industry. "This indicates to us that some companies are moving their freight without proper filing," said Gerard J. Horner, chief of Census' AES Branch.

"In the future, if you receive a fatal error in AES, and you fail to correct it quickly, you're subject to a maximum civil penalty of $10,000 per occurrence," Horner said. Criminal penalties could lead to time in prison.

AES filers can still obtain an "internal transaction number" from the system even though the filing may not be successfully processed in the system. This number is placed on the bill of lading or air waybill at the time of export, appearing to legitimize the shipment. Under the new regulations, an AES filing must be fully processed through the system before the internal transaction number is usable.

Mark Menefee
counsel, Baker & McKenzie LLP

"Everything associated with exporting is being forced into an electronic environment by AES. Once that gets implemented, the liability exposure for both exporters and forwarders goes through the roof."

Census said it would initiate a "no tolerance" policy for those firms that repeatedly violate the AES filing rules errors, and violators could lose their privileges to file electronically altogether. CBP could also detain cargo for non-compliance.

Shared Compliance. Exporters and forwarders have increasingly shared the regulatory heat for violations of U.S. export control rules since the late 1990s.

One of the first landmark cases occurred in 1997 when Hanson, Mass.-based exporter President Titanium was fined $125,000 by the Commerce Department for allegedly shipping unlicensed titanium bars on 25 occasions from the United States to various foreign ports without the proper licenses. The company's four forwarders, Hellmann International Forwarders, Thyssen Haniel Logistics, JML Freightforwarding and Morrison Express Corp., were separately fined a total of $65,000 for allegedly making false statements on export control documents.

Frank Deliberti, then Commerce Department acting assistant secretary for export enforcement, said the cases "demonstrate that both exporters and forwarders are responsible for complying with U.S. export laws."

DiVecchio, whose firm provides export compliance services, said the biggest problem for exporters and forwarders is to identify who in a transaction is responsible for which activities. Inadequate compliance controls could easily muddle the line of responsibility between exporter and forwarder, he said.

The most difficult outbound shipments for exporter compliance involve so-called "ex-works," or "routed" cargo. These shipments occur when the overseas buyer appoints a forwarder to handle its forwarding. Exporters that care about export compliance worry that these buyer-appointed forwarders won't take their compliance and AES filing obligations seriously, DiVecchio explained.

Likewise, forwarders become concerned when exporters withhold certain shipment information that's required to successfully process export declarations in AES. Forwarder clerks may be tempted to enter wrong information just to move a shipment out the door, DiVecchio said.

Other forwarders may attempt to outright disregard the export regulations to move shipments overseas, but the outcome for non-compliance is potentially serious.

In July 2003, forwarder DSV Samson pled guilty to charges that it forwarded more than 30 shipments to India between November 1999 and May 12, 2001, despite being warned by special agents of the Bureau of Industry and Security on three occasions that these shipments would be in violation of the Commerce Department's export control rules. The District Court for the District of Columbia sentenced DSV Samson to a $250,000 criminal fine, an $800 special assessment and five years of probation. Separately with the Bureau of Industry and Security, DSV Samson agreed to pay a civil penalty of $399,000 to resolve related administrative charges.

U.S. Attorney Roscoe C. Howard Jr. warned that "freight forwarders are the last link in the export chain and must not knowingly make shipments from the United States that do not comply with the export laws for the safety and protection of our national interests.

"Because of the position that freight forwarders hold in the chain of international commerce, they have a unique opportunity to ensure export compliance," Howard added. "Freight forwarders and anyone else with responsibility for compliance with U.S. export laws, will be held responsible for such compliance, particularly when our national security is at issue."

Many exporters and forwarders are sharpening their outbound compliance programs to avoid breaking export control laws.

"We're not going to operate on the edge" of regulatory compliance, said Brian Amero, corporate trade compliance manager for Teradyne, a Boston-based semiconductor test manufacturer. "We gather end-use information into our system, and a person reviews all orders for accuracy."

Thermo Electron, a Waltham, Mass.-based instrument equipment manufacturer, has reduced its number of forwarders from upwards of 20 to four to improve its export compliance. "We're able to control the forwarders much better," said Gil Nunes, the company's export/import compliance manager, in an interview.

"One of the thorns in our side are the routed orders," Nunes said. "We try to give the routed forwarders as much information as we can to fill out the SED, but we never know if they do it properly because they're under no obligation to give us a copy of their filings."

Teradyne's management is considering filing its own export declarations through AES, instead of letting contracted or routed shipment forwarders enter this data. "We think we can do this ourselves efficiently and accurately," Amero said.

DiVecchio, who has provided export compliance consulting to both Teradyne and Thermo Electron over the years, has helped these companies better manage their compliance relationships with routed forwarders by prescribing "letters of engagement." These letters specifically spell out the obligations of the exporter and forwarder. Exporters expect forwarders to follow their shipping instructions to the letter, while forwarders must have the knowledge to know when information is missing or not correct. DiVecchio also encourages exporters to request a copy of the export declaration filed in AES for their records.

"The forwarder, either contracted or picked by the overseas buyer, cannot make technical decisions," DiVecchio said. "The forwarder can guide the exporter to the section of the regulation to make the judgment."

Waite

"We have regular shippers and we're confident that what they send us is accurate, but we check it closely anyway," said Harvey Waite, vice president of OceanAir, a Revere, Mass.-based forwarder. "We have an excellent track record and we want to

From nuke production to golf clubs

A look at when U.S. titanium exports are controlled.

WASHINGTON

Two companies want to buy titanium tubing from the United States to make golf clubs. One company is located at Vatican City and works for the pope and the other, in Russia, provides sporting goods to former President Boris Yeltsin. Which shipment's destination requires a license?

These are the types of tricky questions that exporters and their freight forwarders must routinely deal with on a daily basis. Failure to act appropriately can lead to severe regulatory action.

Paul DiVecchio, president of Boston-based DiVecchio & Associates, uses the titanium example during his routine training sessions with agents from the U.S. Commerce Department's Bureau of Industry and Security and the Department of Homeland Security's Customs and Border Protection. "With titanium, there are no assumptions," he said.

Titanium shipments are particularly challenging because of the material's potential use in the manufacturer of weapons of mass destruction. Law enforcement officials are on the lookout for where titanium exports are headed overseas and who are their buyers and ultimate end users. In the case of the destinations Vatican City and Russia, the export control outcomes may surprise you.

Shipping titanium tubes to the Vatican to make golf clubs for the pope would automatically require a U.S. export license from the Commerce Department, because the Vatican is not a member country of the Nuclear Suppliers Group. "The pope may be a nice man, but in the eyes of export regulators this shipment could come in the front door of the Vatican and leave the backdoor to a questionable entity," DiVecchio said.

Titanium tubing may be shipped to Russia without an export license under strict specifications, because the country is a member of the Nuclear Suppliers Group. However, compliance with U.S. export control regulations comes down to details.

First, the exporter is responsible to access the U.S. Export Administration Regulations (EAR) to check the precise requirements for exporting titanium tubing. Once the export control classification number (ECCN) is located, the exporter must compare its titanium tubing specifications against three parameters:

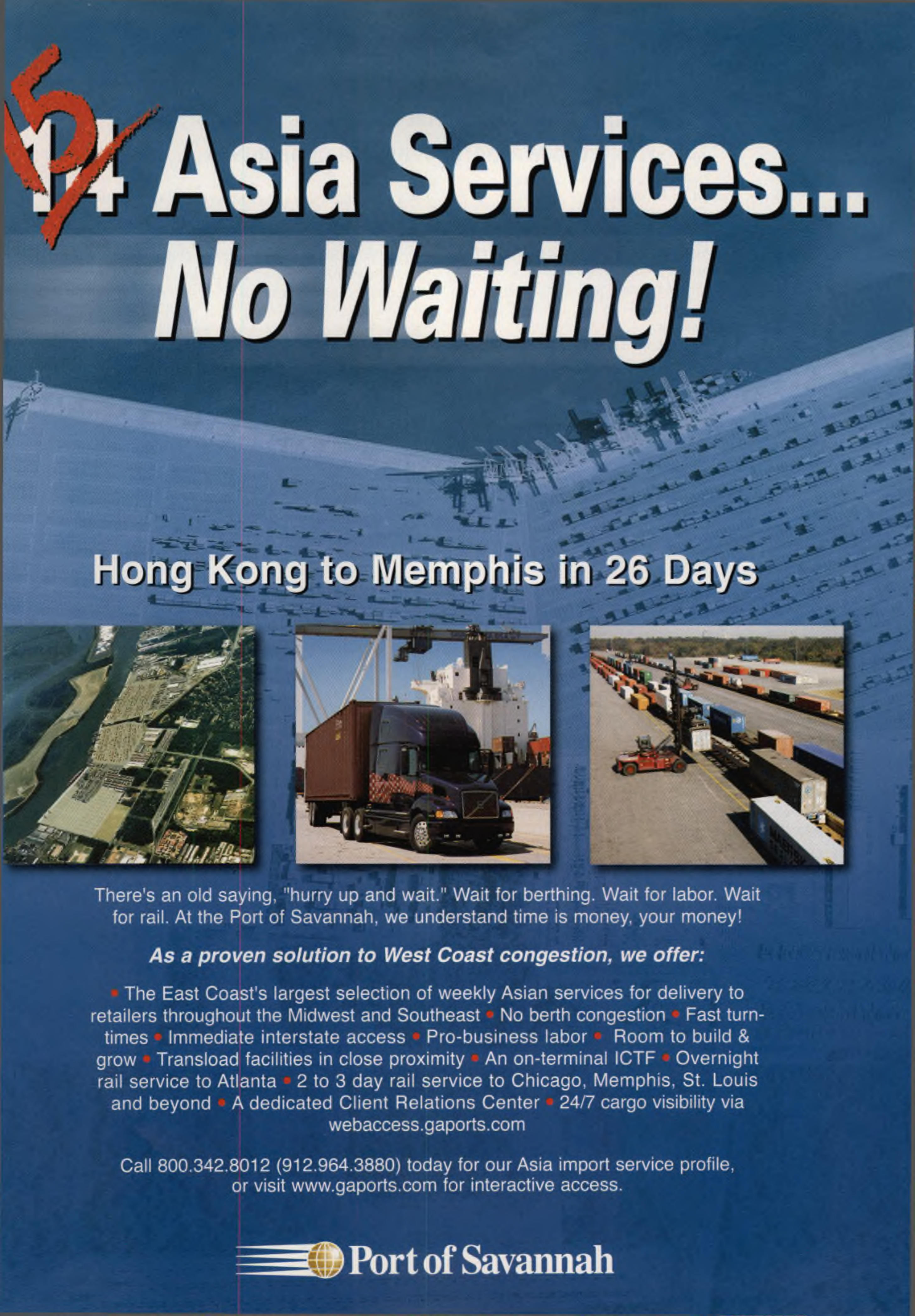
- Is titanium tinsel strength or greater?
- What's the temperature range?
- Is the tubing's outside diameter greater than 75 millimeters (or three inches)?

If none of these categories apply, the exporter with possible help from a forwarder must ensure that the end user is neither on the Commerce Department's denied party and entity lists, nor on the Treasury Department's Office of Foreign Assets Controls prohibitive nationals list. If an importer's name appears on any of these lists, an export license would be required, and likely denied by licensing agencies in the case of denied parties and OFAC prohibitive nationals list.

Lastly, the exporter must conduct an end-use check so that the titanium won't be directly or indirectly used for missile, nuclear, chemical or biological weapons production.

"If the shipment passes the test, then you could make your shipment to Russia without a license," DiVecchio said.

While the exporter is ultimately accountable to the export control regulations, forwarders should help to point out mistakes. "If the forwarder sees something wrong it should question it, but the ultimate decision rests with the exporter," DiVecchio said.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U.S. export laws compliance by U.S. exporters, freight forwarders, overseas consignees

1. Objectives shared by all parties
- Move goods from point A to point B in a timely and economical manner.
- Comply with all regulations concerning exports, imports.
- Comply with the terms of sale and risk of loss.
- If problems arise, resolve them quickly and fairly.

2. U.S. export regulations
- Dual-use items: Export Administration Regulations (EAR), 15 Code of Federal Regulations, Parts 730-774.
- Munitions items: International Traffic Regulations (ITAR), 22 C.F.R., Parts 120-130.
- Embargoes, terrorist group and terrorist supporters, narcotics traffickers, etc.: Various regulations promulgated by the Treasury Department's Office of Foreign Assets Control (OFAC), such as 31 C.F.R., Parts 500-597).
- Shipper's export declarations, Automated Export System (AES) records: Foreign Trade Statistics Regulations (FTSR), 15 C.F.R., Part 30.

3. U.S. Criminal Code Provisions
- False statements: 18 U.S. Code Section 1001: Prohibits making a materially false or fraudulent statement to any government agency.
- Conspiracy: 18 U.S. Code Section 371: Prohibits a conspiracy by two or more people to commit an offense against the United States or to defraud the United States.
- Accessory after the fact: 18 U.S. Code Section 3: Prohibits a person from knowingly assisting another person who has committed an offense against the United States.

4. U.S. exporter's responsibilities
- Comply with applicable licensing, regulatory requirements.
- Primary responsibility for insuring that all parties to the transaction, including freight forwarders and overseas consignees, comply with licenses, license conditions or provisos, and regulations.

5. Freight forwarder's responsibilities:
- Comply with applicable licensing, regulatory requirements.
- Do not facilitate a transaction you know is illegal.
- Comply with any applicable licenses, license conditions or provisos.
- If contracted to do so, submit shipper's export declarations or AES records on behalf of exporter in a timely and accurate manner, in compliance with the FTSR.

6. Overseas consignee's responsibilities
- Comply with EAR, ITAR, and OFAC regulations.
- Note: U.S. export laws can apply to consignees and their activities outside the United States.

7. Typical causes of U.S. export control violations
- Communication breakdowns between exporter, freight forwarder, and/or overseas consignee concerning who will be responsible for providing what information to the U.S. government.
- Communication breakdowns between these parties concerning whether U.S. export control law applies to the transaction and, if it applies, what the law requires from each party.
- General lack of knowledge of the export control laws.
- Negligence or indifference.
- Conspiracy to violate foreign customs or import laws, which leads to violations of U.S. export control laws or the FTSR.
- Conspiracy to violate U.S. export control laws.

8. Best practices for insuring compliance with U.S. export control laws
- Communicate — accurately, diligently, and timely — with all parties about the objectives for the transaction and about the application of U.S. and foreign laws.
- Use a precise power of attorney form to delineate the responsibilities of all parties.
- Establish a compliance relationship where all parties help each other to insure that the shipment is completely legal — "when in doubt, check it out" instead of "when in doubt, ship it out."
- Keep complete records of the transaction for five years, and have them readily accessible.

Source: Mark D. Menefee, counsel for Baker & McKenzie LLP.

keep it that way."

Waite added: "We take our responsibility seriously, and we invest a lot of time and money to keep up to date with the regulations. When we see people undercutting the regulations, they're taking advantage of us, and there may be stuff going to bad guys. The head-in-the-sand mentality today is not a good place to be."

Some U.S. industry experts believe forwarders should be tested and licensed in the same manner as customs brokers. Forwarders are licensed and bonded with the Federal Maritime Commission, but this is for compliance with competitive trade practices under the 1998 Ocean Shipping Reform Act. No testing is required for FMC licensing.

"There's no standard test for forwarders to provide export services," Menefee said. "Without standards, responsible forwarders in the United States are being undercut by forwarders who are untrained and don't care."

Menefee said traditional forwarders are left with the trickier shipments that are more likely subject to export controls. "The default standard for the government is enforcement and that's not the way to go," he said.

In early 2003, Census' Foreign Trade Division had proposed to license AES filers to enhance the quality of date filed through the system and to help the agency better pinpoint problems.

Several years ago, the National Customs Brokers and Forwarders Association established a certified ocean forwarder (COF) program among its membership. The NCBFAA's COF instruction and test, in addition to covering all aspects of ocean freight transportation, includes export compliance.

"I think it's a great idea," Menefee said about the NCBFAA COF program. "It's sad that they have to do this without support from the government." ■


TACOMA

TRADE analysis: Eastern Europe – Russia

Dear Subscribers:

In this section you will find the first edition of our Trade Analysis series. This compilation of articles is designed to provide you with an in-depth, well-rounded view of specific developing markets around the world.

In this issue our staff has explored recent changes in Eastern Europe, including regional trends in logistics management, changes in customs policies and capacity issues impacting the local ports and intermodal infrastructure.

Later Trade Analysis coverage this year will address Asia Pacific & Australia, Latin America and China.

The Trade Analysis reports will benefit from our staff's broad range of industry expertise. Each Trade Analysis compilation will explore topics including logistics, supply chain management, trade and regulatory policy.

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Hayes H. Howard

Hayes H. Howard

Publisher

Redrawing Eastern Europe's logistics map

Logistics providers, manufacturers see improved logistics after eight Eastern European countries joined EU.

BY PHILIP DAMAS

In May 2004, the European Union was enlarged to include eight new countries in Central and Eastern Europe: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia.

Virtually at a stroke, the logistics map of European logistics and Europe-wide distribution was also redrawn to reflect the new product flows in the region, the easing of border controls and improved trade procedures.

When Eastern European countries joined the EU, "the borders were taken out," said Janusz Górski, president of Warsaw-based Schenker Sp. z.o.o., part of the Schenker logistics and forwarding group.

Gorski

"Today there is no waiting at all; in the past, it took up to three days to cross the border at peak times," Górski said.

The result: "A truck can make at least 30 percent more work," he said.

Before the enlargement of the EU, traders in Eastern European countries required excess buffer stock to accommodate long and unreliable supply chains, and they had to deal with more bureaucracy, Górski explained. "Now the delivery time is 48 hours from Poland to nearby countries and 72 hours to the majority of other countries."

Truck waiting times at the borders "have decreased by about 12 hours," said Friedrich Macher, general manager of Kuehne + Nagel Austria.

However, Macher cautioned that the new eastern countries of the EU have not yet joined the so-called Schengen agreement, which allows the movement of people without controls at internal borders of the union.

Besides the easing of border controls, Macher has seen the lifting of previous transport restrictions in Eastern Europe.

Companies can now organize the distribution of their products "following geography, not politics," he stressed. For example, cities located in the west of the Czech Republic near the Austrian border can be served via the airport of Vienna, in Austria.

Macher hailed the possibility of moving to "optimal distribution" after the recent deregulation.

Kuehne + Nagel Austria believes Eastern European logistics is catching up the practices of countries in the old countries of the EU.

"We can have the same level of service from point to point," Macher enthused.

Location Of DCs. The vast majority of large multinationals operating in Europe have regional distribution centers located in the Netherlands or Belgium — regarded as good locations to serve most of the European markets.

Now, large companies are considering setting up a second distribution center in Eastern Europe, Macher said.

"We see a bit of decentralization," he added.

The shift to Eastern Europe changes the parameters to determine whether a multinational requires one of more distribution centers to serve all European markets.

Górski said these decisions depend on the location of the principal markets served by a particular company. "There could be a combination of a distribution center in Poland and another further west in Europe," he said.

Schenker sees many opportunities for companies to move their operations and logistics hubs to Poland.

Kuehne + Nagel operates two common-user distribution centers in Eastern Europe and the Baltic region. The Baltic regional distribution center is located in Poland.

Distribution in Poland is also moving to "more frequent and smaller shipments," Górski reported. For example, companies ship "groupage" cargoes by road (for weights of less than 2.5 tons) instead of less-than-truckloads (LTL), or LTL shipments instead of full truckloads. These changes favor operators of groupage networks like Schenker.

Production Transfer. Two other major shifts that Schenker has observed in Poland are the greater entrepreneurship of local companies and the increased interest in foreign direct investment into the country.

"One of the attractions of our country is that we are cheaper," Górski said. Poland combines low labor costs with a well-educated workforce and "a quick development of IT," he added.

For Polish exporters, this means they are looking for new market outlets, starting with countries that border Poland, Górski said. Foreign investors are also moving manufacturing facilities to Poland.

"The big multinationals are already here," Górski said, citing General Motors and Volkswagen. Now, other western companies are following.

Poland has attracted producers of automobile components. The Czech Republic and Slovakia have become important centers of assembly for the automobile industry.

Górski relates that the Swedish engineering group ABB has closed a factory in Sweden and opened a new production line in Poland.

Macher, at Kuehne + Nagel, recalls that large-scale investments in manufacturing first happened in the early 1990s', after the fall of the Iron Curtain.

He sees the entry of the former communist countries in the EU as a second phase.

"Some of the companies that moved to Hungary are now moving to the Ukraine," he explained. "For us, new opportunities come up supporting these companies."

"We observe that companies are moving to Poland because of our closeness to eastern countries like the Ukraine, Russia and the Baltic countries," Górski said.

All these changes, and the ability of Poland to act as a host for international distribution centers, are expanding the business scope of third-party logistics providers.

Górski said Schenker helps companies restructure their supply chains and assess the reliability and cost of distributing products from Poland to the region or to the rest of Europe.

Transportation infrastructures in Poland remain poorer than in Western Europe. However, Górski observed that there is little road congestion on Polish roads at night, a favorable environment for intercity distribution.

"The road and rail infrastructure (in Eastern Europe) is insufficient," Macher observed. "Railways are government owned and are in a phase of liberalization."


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Bordering on success

New eastern European Union markets extend port of Hamburg's reach.

By Robert Mottley

How fast can an impediment of geography become a blessing?

It happened overnight for the port of Hamburg in May 2004, when eight nations in Eastern Europe joined the European Union — an evolution that began with the dismantling of the Berlin Wall in 1990, which gave Hamburg access to markets in Poland, Hungary and Czechoslovakia (as it was then known).

Prior to 1989, Hamburg had been on the eastern extremity of Europe. Today, when Europe's eastern boundary is the border of the Russian Federation, Hamburg is closer than any other major European port to Estonia, Latvia, Lithuania, Poland, Hungary, the Czech Republic, Slovakia and Slovenia.

Nine months after those countries, along with Cyprus and Malta, raised the number of EU members from 15 to 25, the flow of containers through Hamburg to and from the east and south has confounded experts.

"We will have moved about 7 million TEUs when the count is done for 2004," said Jurgen Sorgenfrei, chairman of Port of Hamburg Marketing. Perhaps one-third or more of that total, early reckoning suggests, can be credited to evolving markets in the east.

In an interview with *American Shipper,* Sorgenfrei cited the latest developments in Hamburg's port infrastructure: a new railway siding with six tracks for container "block" trains, each train being 750 meters long; and a project to improve access to the river Elbe. Yet he also noted that while his port could handle surging eastern cargoes, geography in the new Europe could not be ignored.

"Rotterdam, until recently, was the largest port in the world. In 2004, Shanghai became the biggest port," Sorgenfrei said. "Rotterdam's status is also changing in Europe."

"The majority of business in the past three to four decades took place in the western part of Germany, the Netherlands, Belgium, and the northern part of France," he said.

"Since the opening of the Iron Curtain to eastern Europe, we are absolutely in the center of a new developing market, which has GNP growth rates of 3, 4, and 5 percent when you look at Poland, Hungary, the Czech Republic, Slovakia, the Baltic States and Russia, as well," he explained.

"If you look at the map of Europe, you'll see that Hamburg is the most northern and eastern of ports with the major infrastructure to serve this burgeoning market," Sorgenfrei said.

Berzon

"The center of gravity of Europe has shifted from the Antwerp-Rotterdam area more into Germany, closer to Hamburg. That's based on the consuming population, and gives Hamburg an advantage it never had before," said marketing consultant Michael Berzon.

Baltic Ports. Another fact, irrefutable at this time, is that ports of countries along the Baltic Sea are small, and generally serve only their own national markets.

For example, Gdynia, the largest Polish port on the Baltic, handles 50,000 TEUs a year. "No port is in a position to challenge Hamburg's infrastructure," Sorgenfrei said.

"The only one I could foresee doing that in 10 to 15 years would theoretically be St. Petersburg," he said. "However, the entrance channel from Kronstadt on the Baltic to the terminals in the port of St. Petersburg has a draft of 10.5 meters that can sustain only one-way traffic today."

Water depth has also made the Baltic Sea a feeder zone, as a matter of practicality. The world's deepest-draft containerships cannot enter the Baltic around Denmark.

"Even if vessel drafts allowed entry to the Baltic, would you really want to take a big ship on a milk run? That's cost-prohibitive," Berzon noted.

Instead, a web of highly developed feeder services has extended from Hamburg throughout the Baltic region, using vessels with capacities of 500 to 750 TEUs that sail two and three times a day. "They go all over the place. It's an incredible network," Berzon said.

To extend their reach north and east, port interests in Hamburg have invested heavily in Lubeck, a German port on the Baltic Sea that's about 60 miles from Hamburg.

In particular, the HHLA Group, the largest terminal operator in Hamburg, owns a terminal in Lubeck, which is linked by direct road and rail routes to Hamburg.

Transport Options. *American Shipper* asked Sorgenfrei and Berzon to assess logistics options in the eight new eastern members of the European Union.

In Estonia, Latvia, and Lithuania, deliveries are made primarily by truck to local markets. The ports in those small Baltic nations, such as Riga, in Latvia, "dream the dream they can be entry points for the Russian market, but that is against present Russian transport policies," Sorgenfrei said.

He explained that the port of Klaipeda, in Lithuania, has the best facilities, equipment, and skilled labor in the region, but it serves primarily Lithuanian markets with little transshipment options into Russia.

In Poland, which had a total estimate flow of 650,000 TEUs in 2004, about 350,000 TEUs come through ports. The rest goes in or comes out of Poland overland, in a nearly equal balance of road and rail transport.

"In Poland, they plan beyond what seems possible. The port of Gdansk dreams of handling mega-ships, except such vessels can't get into the Baltic," Sorgenfrei said.

The Czech Republic is one of the best-performing states in Eastern Europe in terms of transportation. "The whole situation is booming," he said.

Czech markets are served two-thirds by containers from Hamburg, which arrive by block train. The remainder of containers come in from Rotterdam and Antwerp.

Container volumes in Slovakia are not quite at the level of the Czech Republic, and rail service is not as dependable.

"Hungary is like the Czech Republic. There's a very good logistics situation in Hungary. Most containers go by truck, although rail service is improving. The Danube has limited cargo traffic, because many bridges in Romania remain destroyed," Sorgenfrei said.

In Slovenia, "almost all shipments travel by truck. Rail service is down to almost zero," he explained.

Berzon noted, "the rail infrastructure in Poland, the Czech Republic and Hungary tends to be spotty. There are main tracks that are good, but in many cases you can't wander far off the main line. In central Europe, it doesn't take you long to literally get off the tracks."

"The roads in Poland especially are not very good, to the point that the main east-west highway in that nation is marginal at best," he said.

"Despite the increase in the volume of commercial transportation, Poland isn't


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spending much money on roads, which means delays and a level of trucking quality that is highly questionable," Berzon said.

"That's why freight is best sent by rail from Hamburg to Warsaw," he added.

National borders in the eastern region of Europe are not yet crossed as easily as those in central and western Europe. Bills of lading still have to be changed for transit into most eastern countries, Sorgenfrei explained.

Third-party logistics providers thrive mostly in capital cities across Eastern Europe, he said.

"They do well in Moscow, Prague and Warsaw, but 50 kilometers outside of such cities, 3PLs don't have much impact," he noted.

Next Circle. Beyond the eight new EU members in the east, other nations in the region are developing logistical infrastructure with varying degrees of success.

"There is mostly trucking in Belarus, and limited volumes also, because it is currently the most isolated of eastern European countries," Sorgenfrei said.

"Ukraine is improving in its shipments. It's the next upcoming state, very rich in intermodal options and natural resources," he explained. The transportation market in that country is dominated by Ukrainian Rail, said to be the largest railway organization in Europe.

Markets in Romania, further away from Hamburg than Ukraine, are served mostly by trucks and dominated by a handful of freight forwarding companies.

In Croatia, Bosnia Herzegovina, Yugoslavia, and Bulgaria, goods are delivered almost exclusively by truck, due to damage to rail lines caused by hostilities in the 1990s.

The Black Sea is not unlike the U.S. Great Lakes, crisscrossed by shipping that originates around its shores.

"All outgoing Black Sea traffic is transshipped feeder traffic from Mediterranean hubs," Sorgenfrei said.

"Adriatic ports are in a good position to serve markets in Austria and Hungary, but they are lacking in infrastructure," he said. "Truck traffic from such ports doesn't go easily through Alpine tunnels, either."

Customer Demands. As more supply chains extend into the eastern region of Europe, logistics demands are beginning to resemble those in western EU nations and in the United States and United Kingdom.

"Expectations for just-in-time deliveries are increasing in the east, even if the reality isn't quite there," Berzon said.

"That is driven more by exports from Poland and the Czech Republic, in particular, rather than by imports. Consumers in Western Europe and the U.S. demand that sort of delivery, reliability and scheduling," he said. "If you're going to source in Poland and the Czech Republic, you really have to be very careful where and how you run your supply chain."

Labor costs are already going up in Poland and the Czech Republic. "You may have delays in getting products out of the Czech Republic because they aren't up to snuff in the application of technology in distribution centers," Berzon said.

"You also have to make cultural checks. Will a distribution center be able to operate 24 hours a day, seven days a week? Does a facility's infrastructure for communications include cell phones and high-speed Internet access?"

Given the evolving markets in Eastern Europe, such plausible caveats are only teething problems. "The huge expected flow of goods will take hold," Berzon predicted.

"In fact, Johnny-come-lately countries have the advantage of choosing the latest technology, which is how Europe wound up with steel mills after World War II that outproduced older U.S. mills," he explained.

In Hamburg, port interests are making the most of their altered geographical fortune. "Although Hamburg and Rotterdam are now about equal in container volumes, the east favors us," Sorgenfrei said.

"In time, we'll serve a geographic region with more than 200 million people. In contrast, Rotterdam will be the entry port for goods reaching about 140 million in the western part of Europe. That is the ratio most demographers predict," he said.

Russian preclearance struggles for foothold

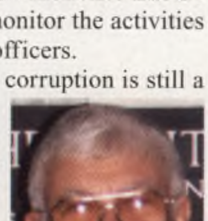
Systems developers say uncooperative consignees stand in the way.

By Chris Gillis

Automated tools are available to improve the cargo clearance process in Russia, but ongoing corruption among the country's importers and rank-and-file customs officers at the borders curtails their implementation.

Modern information technology promises to help clean up corruption in Russia's customs clearance process, and shows regulatory authorities which companies are complying with import rules and paying appropriate duties, and which ones that are not. It also helps to monitor the activities of Russian Customs officers.

"The reality is that corruption is still a big problem, and the consignees in Russia will find every reason not to cooperate," said Richard Shannon, president and founder of Rutherford, N.J.-based AmeRussia Shipping Co.



Shannon

In 2001, AmeRussia through private investment developed Transatlantic Streamline to speed up import processing for ocean shipments from the United States to the Russian port of St. Petersburg and, at the same time, give Russian Customs more control over the process. Russian Customs officially endorsed the program in April 2002.

Shannon said he's contacted more than 200 shippers in the United States and more than 95 percent supported Transatlantic Streamline. For American shippers, the program provides "prompt delivery and eliminates penalties for late delivery as well as additional port storage charges, container demurrage and an uncertainty of being able to do business and live up to contracts," Shannon said.

Participants in Transatlantic Streamline are able to have their cargo precleared and released within three hours after arrival. Eligibility requirements for this program include using AmeRussia and Russian customs broker Interrus Customs to verify customs compliance before shipping from the United States, collect customs duties and submit clearance documents prior to arrival of the cargo in St. Petersburg.

Under separate agreements between Russian Customs and the St. Petersburg port, Transatlantic Streamline's precleared cargo receives preferential berthing, advanced ordering and availability of railcars for moving the cargo from the port.

With these benefits, Shannon finds it ironic that many Russian importers still take great risks to avoid paying proper

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duties and work with corruptible customs officers, instead of using a legitimate cargo clearance program. "It's frustrating," he said.

Transatlantic Streamline's developers aren't alone in their frustration. Clear-Pac, another American-developed customs preclearance program, has struggled to establish itself in Russia.

"One thing you definitely need when you work in Russia is lots of patience," said Goran Latkovic, Clear-Pac program director, in a recent interview. The Seattle-based Foundation for Russian American Economic Cooperation, through annual funding from the U.S. Commerce Department, has spent the past eight years working with customs in the Russian Far East to introduce automated preclearance procedures.


Latkovic

Clear-Pac software promises to complete 90 percent of the entire customs clearance process before the cargo arrives in Russia. During a trial period, Clear-Pac reported clearance times for ocean cargo at several hours to a day and half and only four to six hours for air cargo. It is now used by Russian Customs to process imported goods in Vladivostok and Sakhalin and for transit cargoes at Vostochny. Like Transatlantic Streamline, Clear-Pac was also recently endorsed by Russian Customs' senior leaders.

"What we're focused on is providing information to Russian Customs that will help them process it electronically and release cargo faster," Latkovic said.

Both Transatlantic Streamline and Clear-Pac are still in the experimental stages of implementation in Russia, and the programs' directors await the Russian government's commitment to improve import clearance and institute business reforms.

Taking Steps. In the mid-1990s, Russian Customs began to develop its first automated systems, but they were for internal use only with no links to the international shipping industry.

Without automated clearance technology and some modifications to the law, Russian Customs is unable to clear cargo until the freight arrives in port. Clearing cargo in the Russian Far East, for example, can take up to two weeks, resulting in thousands of dollars in storage fees and other charges, in addition to cargo damages and lost business for shippers.

Lack of customs data control shortchanges the Russian government from significant revenues. Today, Russian Customs duty and tax collections provide about 40 percent of the government's revenue. Paper-based import clearances could result in underreported duties from Russian consignees, both Transatlantic Streamline and Clear-Pac officials pointed out.

"AmeRussia has turned away handling freight in the United States simply by stating that all shipments must be at the actual duty rate according to Russian Customs rules," Shannon said. "Our process involves a physical inspection with qualified inspectors to verify correct declarations."

In an effort to seek compliant companies, Shannon said this "narrows our volume base" through the Transatlantic Streamline program.

Russian Customs has considered instituting preshipment inspection programs to confirm what's documented in writing against what's actually loaded into containers.

Shannon believes mandatory preshipment inspection services are the wrong approach for Russian Customs. "In many countries where preshipment inspection programs have become mandatory, it has become a vehicle for more corruption, not less," he said.

Transatlantic Streamline is a voluntary program. "It's a shame that those companies that wish to deal legitimately are penalized for the ones that use different methods to pay duties," Shannon said.

Clear-Pac also promotes a voluntary user structure to fuel its program. "We're focused on providing information to Russian Customs that will help the agency process imports electronically and release the cargo faster," Latkovic said.

Russian President Vladimir Putin's apparent efforts to reduce corruption gives the program developers reason for optimism. Another positive move is the Russian government's eagerness to modernize its customs clearance procedures to meet admission standards for membership in the World Trade Organization.

"Our biggest hope for 2005 is that the Russian government will start cracking down on those companies that are not complying with Russian Customs regulations whether it be with the shippers, consignees, brokers or customs officials," Shannon said.

Customs Modernization. Leonid Lozbenko, deputy chairman of the Russian Federal Customs Service, and former deputy secretary general of the World Customs Organization, is credited with spearheading recent administrative and training reforms within the agency.


Lozbenko

In 2003, the World Bank agreed to provide Russian Customs with a $140-million credit for its modernization program. Leonid Ukhlinov heads information technology development for Russian Customs. The goal is to bring Russian Customs' systems in line with the provisions of the WCO's International Convention on the Simplification and Harmonization of Customs Procedures, or Kyoto Convention.

In April 2003, the Russian State Duma (parliament) passed a new customs code, which establishes the first legal and operational foundation for electronic cargo clearances. The code became effective Jan. 1, 2004.

Based on the new customs code regulations and information technology standards, Clear-Pac plans to develop a second version of its preclearance software.

"I'm confident that we'll complete the revision this year," Latkovic said. "We're working closely with Russian Customs. We're not creating something with no future in it."

Clear-Pac officials are also banking on Russian Customs' apparent commitment to preclearance technologies, because Commerce Department funding may eventually dry up. The goal for the foundation is to make Clear-Pac a self-sustaining, fee-based program.

While Clear-Pac and Transatlantic Streamline remain separate initiatives, the program developers are mindful of each other's work in Russia. "Clear-Pac has some elements and we have some others that could possibly complement each other," Shannon said. ■

China Customs clamps down on counterfeiters

Chinese government increases penalties for violations, works with shippers and other countries.

BY CHRIS GILLIS

China is rapidly becoming the undisputed global manufacturer, but it increasingly suffers from the political damage of serving as a leading source of counterfeit merchandise.

In response, the Chinese government instituted a series of measures to more efficiently wage its internal war against product counterfeiters.

"The Chinese government has attached great importance on IPR (intellectual property rights) protection and listed it as an indispensable component of its reform policy," said Yang Qin, senior specialist of customs policy and administration for China Customs. "IPR protection is the requirement to improve national industrial competitiveness and the cornerstone to guarantee the healthy development of the economy."

On Dec. 22, new anti-piracy rules approved by the Supreme People's Court lower the threshold for offenses that warrant a jail sentence and increase the maximum penalty to seven years in jail. China Customs is implementing measures at the country's borders to detect and seize counterfeit goods.

The United States, European Union, and Japan complain that piracy is the primary impediment in trade relations with China because companies in those regions are losing billions of dollars in global sales to products that are made to resemble their brands at a fraction of the cost.

"It is true that on the streets of European countries, one can easily buy counterfeit cigarettes produced in China and in the underground shops of Japan one can buy pirate CDs and DVDs exported from China at much cheaper prices," Qin said.

It's estimated that 20 percent of all consumer products sold in the Chinese market today are counterfeit, and in some sectors, such as software, recording, and luxury consumer goods, the percentage of piracy could be much higher.

"Those shippers who have moved their production to China are certainly at risk of having their products copied by pirates," said Mark J. Dunn, senior advisor for the Washington-based Global Alliance for Trade Efficiency (GATE), which is under contract to provide modernization recommendations and training to China Customs.

"There is no escaping the reality that the Asia Pacific region is the engine room of counterfeit production in the world and China as the emerging super economy in the region is an enormously important part of that problem," said David Blakemore, executive director of the Asia Pacific Secretariat for the World Customs Organization IPR Strategic Group.

But Chinese government officials say the problem is much bigger than just those products manufactured for export. They say China's developing nation status subjects it to counterfeit imports.

"China has frequently become the destination country of counterfeit goods," Qin said.

According to China Customs, each year the quantity of pirated CDs and DVDs alone smuggled into China exceeds 200 million pieces.

Increased Enforcement. For the past 10 years, China Customs has led the country's war against counterfeits. Since 1994, the agency has initiated more than 10,000 IPR border enforcement actions and seized more than 4,000 shipments at a value of $80 million. Among these actions, 103 criminal cases have been filed.

Qin said China Customs' IPR border protections go beyond the basic requirements to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The country's revised customs law and the ordinance governing IPR customs protection revised in 2003 simplifies anti-piracy enforcement procedures and provides more conveniences for property rights holders. Corresponding implementation rules established in May 2004 make the IPR regulations "clearer and more applicable," Qin said.

Qin

These regulations not only protect registered trademarks, but also patent, copyright and exclusive rights of the Olympic mark both for export and import clearance processes.

"Officers at different ports are empowered to confiscate suspected consignments based on the reports of rights holders and more

Through a Beijing court in late December, Honda was able to put the brakes on China's Chongqing Lifan Industry Group Co. from building and exporting knockoff Honda bikes, called the Hongda.


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importantly, they can conduct legitimate investigations on their own initiative," Qin said.

"Container scanning equipment and risk management techniques have been widely utilized and appropriate education and training have been provided to field officers to improve the efficiency and effectiveness of IPR protection," he added. "China Customs also takes full advantage of IT technology to facilitate border protection and the centralized and computerized IPR Recordation System has been successfully developed and launched."

China Customs has established relations with large international organizations, such as the WCO and World Intellectual Property Organization, in addition to individual customs administrations through memorandums of understanding and bilateral assistance agreements.

In February 2003, China Customs, through the WCO's Regional Intelligence Liaison Office for the Asia-Pacific region, organized and coordinated a joint enforcement operation with the customs administrations in Japan and South Korea. "As a result, China Customs officers in Tianjin Port successfully seized two container of 15,000 pieces of sportswear, which infringed on the trademark of Germany's Puma brand," said Qin, who personally helped with the action.

China Customs also provided leadership during the WCO's Regional Forum on Protection of Intellectual Property Rights in Shanghai on Nov. 22-34, which resulted with the signing of the so-called "Shanghai Initiative." The initiative is designed to strengthen regional efforts against counterfeiting.

China Customs also continues to work closely with industry groups. In 2002, China Customs entered a cooperation agreement with the Quality Brand Protection Committee. The committee, which includes more than 100 company members with operations in China, awarded China Customs in the ports of Ningbo, Shanghai and Nanjing for their anti-piracy work in 2003 and 2004.

More Work Needed. While global shippers praise the Chinese government for its anti-piracy efforts, they agree that more still needs to be done by the country to get a grip on the problem.

"Though we have observed commitment on the part of the many central government officials to tackle the problem, enforcement measures taken to date have not been sufficient to deter massive IPR infringements effectively," said Zhaokang Jiang, regional customs counsel - Asia Pacific, for Delphi Corp.

Jiang served as the primary draftsman of China's customs border enforcement regulations in 1994, and was a lead negotiator for the Chinese government's 1995 IPR Enforcement Agreement with the United States.

Jiang noted several factors that continue to undermine IPR enforcement initiatives in China. They are China's reliance on administrative instead of criminal measures to combat IPR infringements, corruption and local protectionism at the local levels, limited resources and training available to enforcement officials, and lack of public education regarding the economic and social impact of counterfeiting and piracy.

"We must understand that the implication of IPR infringement is significant not only to economic interest of the domestic and global markets but to consumption safety, revenue protection, political environment, social stability and government, corporate and individual integrity as well," Jiang said. "The stake to China is such the government can only win the war against counterfeiting."

U.S. Customs and Border Protection seized about $37 million in IPR-offending goods in cargo from China during the first half of 2004, which represents 58 percent of the agency's total seizures during this period. China Customs acknowledges that there has been a 30-percent year-on-year increase in the level of seizures of counterfeit goods since China's accession to the WTO in 2001.

"This indicates an increasing problem, particularly in the south and southeast where because of proximity to major export ports much of the illicit production is based," Blakemore said. "Yet it must be said that it also points to greater effectiveness on the part of China Customs in tackling the problem."

Although China Customs fields more than 40,000 staff in more than 300 branch offices, the agency is overwhelmed by the more than

Zhaokang Jiang
regional customs counsel - Asia Pacific, Delphi Corp.

"Though we have observed commitment on the part of the many central government officials to tackle the problem, enforcement measures ... have not been sufficient to deter massive IPR infringements effectively."

U.S. presses China on IPR protections

BEIJING

The Bush administration has asked China to step up action against product counterfeiters operating within its borders.

While praising the Chinese government for recent steps to strengthen its regulations against counterfeiting, outgoing U.S. Commerce Secretary Don Evans told attendees at the Jan. 13 Forum on Intellectual Property Rights Protection in Beijing that China must start to show results.

"Process is not progress. Results are progress," Evans said. "Commissions, panels, initiatives and memos of understanding are all encouraging signs, but they count for little unless they produce results."

The administration said it has upheld its end of the bargain on various trade deals with China, which is evident in the large amounts of Chinese imports now entering the United States.

"It is absolutely essential that we see demonstrated results from China on IPR (intellectual property rights) protection and the other structural issues that are compromising the Chinese economy in order to establish greater balance in our relationship," Evans said.

Evans pointed out the recent case involving the alleged copying of GM Daewoo's popular car, called Spark, by Chery Automobile co., a state-owned Chinese auto manufacturer. Chery Automobile called its car model QQ.

"This incident defies an innocent explanation," Evans said. "The QQ and the Spark are twins because both cars are built from the same DNA — the proprietary mathematical data and formulas — that were stolen from GM Daewoo and used to build the QQ."

Evans suggested that China increases its fines and penalties against product counterfeiters. "Until China has tough penalties — that can't be written off — the pirates will still be in business."

Mark J. Dunn
senior advisor, Global Alliance for Trade Efficiency

"Those shippers who have moved their production to China are certainly at risk of having their products copied by pirates."

Signs posted on the walls of the Tianjin Port's intellectual property rights violation display hall urge people to do what they can to protect IPR.

$1 trillion in trade entering Chinese ports each year in ocean containers and on board planes. "This presents an immense problem for customs officials who have the task of selecting consignments for inspection and then distinguishing the genuine article from the fake," Blakemore said.

Many industry experts believe the biggest dent in China's counterfeiting epidemic will come with the imposition of stiffer penalties. In addition, as more Chinese companies establish internationally recognized brands, IPR enforcement in China is expected to increase. "There will be more pressure on government authorities from domestic sources to crack down on the violators and enforce harsh penalties to deter other violators," Dunn said.

Qin agrees with the industry's assessment, and believes the anti-piracy goals of the country will be met.

"Of course, we are not perfect and we still have a lot of work to do," he said. "I am extremely confident that China Customs will show a more satisfactory performance in the future through the cultivation and maintenance of human resources with excellent qualifications and the enrichment and upgrading of enforcement instruments." ■

Jump-start for customs agencies

WCO's Danet briefs trade on goals for supply chain security.

By Eric Kulisch

The framework on global cargo security standards proposed Dec. 10 in Jordan by a World Customs Organization policy group goes beyond security and rolls together all the elements of trade facilitation the intergovernmental body has proposed in recent years, according to Michel Danet, the WCO's secretary general.

Michel Danet
secretary general, World Customs Organization

"We want to affect all those modes (of transport) so customs no longer is an impediment or a destabilizing force in world trade."

Under the initiative of the United States and several industrial countries, the 22-member policy committee endorsed a framework for developing a global supply chain security regime closely patterned on the U.S. model for identifying suspicious cargo and containers ahead of time and streamlining the cargo exam process for trusted shippers.

In a meeting with representatives from the U.S. international trade community in Washington Dec. 17, Danet emphasized that the organization's leadership wants to take advantage of the cargo security initiative to jump-start customs authorities to modernize procedures for clearing goods, as the WCO previously recommended.

"We want to affect all these modes (of transport), so customs no longer is an impediment or a destabilizing force in world trade," but rather serves as a "mediator, or referee," in the cross-border movement of goods, Danet said.

Danet is working with a high-level group of national customs directors to galvanize international support for a common supply chain security regime based on U.S. antiterrorism programs that countries can adopt without having to go through the time-consuming treaty ratification process. The group hopes peer pressure and economic leverage will get other countries to adopt the security principles out of fear they won't receive preferential trading treatment.

Danet chided the United States for not ratifying the revised 1999 International Convention on the Simplification and Harmonization of Customs Procedures, and suggested that progress could be hindered on the cargo security front unless the United States signs onto the Kyoto Convention, designed at the time to help combat trade fraud and drug smuggling.

"As long as the United States doesn't give a positive signal" other countries will be slow to adopt the treaty's main principles of standard and simplified customs procedures, improved customs controls, increased use of computer systems and partnerships between customs administrations and industry, Danet said.

Under the WCO cargo security framework, national customs authorities would agree to:

- Collect the same commercial data elements through advance electronic means and share information on inbound, outbound and transshipped cargo.
- Employ a similar risk management approach for identifying high-risk cargo. An automated system should be used for analyzing data for potential threats and targeting cargo for closer inspection.
- Perform an outbound inspection of such cargo with large-scale X-ray machines and radiation detectors at the request of the receiving nation.
- Provide faster processing of goods through reduced levels of exams and other benefits to companies that meet minimum supply chain security standards and best practices.

The framework is designed to provide consistent, predictable rules so traders can more efficiently clear their goods, in addition to strengthening security throughout the supply chain.

The framework agreement is based on the principle that countries will collaborate to help each other to screen or inspect cargo before it arrives at their domestic ports, similar to the U.S. strategy of pushing out inspections beyond its borders. That means border agencies must change from the traditional practice of inspecting imports at the port of arrival to also inspecting exports in an effort to prevent contraband or mass destruction weapons from being

Customs and Border Protection Commissioner Robert C. Bonner (seated left) and Director General Mahmoud Qteishat of Jordan's Customs Department signed a Customs Mutual Assistance Agreement designed to assist the two countries in improving the flow of trade and securing against terrorism.

smuggled to other countries.

The key to collaboration is the use of automated data systems that send harmonized messages and are interoperable, according to a copy of the framework agreement. That will enable customs administrations to engage in joint targeting and screening where necessary and eventually to a common system for deciding how to handle shipments with red flags.

The document also calls on customs administrations to maintain statistics on the number of shipments reviewed, how many are inspected by non-intrusive means or physical exams and other performance measures

The framework will also spell out how companies should strengthen internal supply chain controls and how customs authorities can validate they are taking appropriate steps to correct vulnerabilities.

Danet and U.S. officials stressed that the framework agreement is only an outline and that annexes will be completed by the WCO's annual meeting in June spelling out how the principles can be implemented.

Danet said he will embark on a world tour to brief the rest of the WCO's 164 customs directors about the cargo security framework, beginning with a meeting in Cairo, Egypt with Arab customs directors in January. Danet said he will also meet customs directors in Kazakhstan and in South America, and with the trade groups in all five major continents.

The meeting in Washington was the first in a series of such meetings that the secretary general and the high-level working group of customs directors will conduct to gather the input of the trade on the global supply chain security standards.

Danet said it was important for the group to hear from the small business community too because it plays such a large role in world trade.

Danet said he hopes to get the WCO to sign off on the whole approach in June so that pilot projects can begin to test the elements of a common system.


Scott

Industry leaders who attended the meeting said afterwards they were pleased with the direction in which the WCO was going.

"The more global harmonization you have the more effective these programs are going to be," said Sandra Scott, director of international relations at Yellow Roadway Corp.

"It's a recognition that the U.S. can't do this alone," said Rob Pisani, a partner in the international trade law firm Pisani & Roll.


Pisani

"I think the two key elements are, can you get foreign governments to buy into this?" Pisani said, "and whether or not foreign subsidiaries are going to help establish a similar framework to that in the United States." Industry will have to play a large role, he said, adding that *Fortune 1000* firms could use their influence to press foreign customs administrations about the need to adopt the WCO guidelines.

"Establishing this agreement will in large part help facilitate an important understanding in terms of eliminating duplicative processes that put a drain on industry," said Peter Gatti, executive vice president of the National Industrial Transportation League.

A cautionary note raised by industry representatives was the critical need for customs administrations to safeguard the confidentiality of business information shared by governments, Gatti said. ■

Study: DHS still disorganized

Calls come for restructuring homeland security agency created in 9/11's aftermath.

By Eric Kulisch

The Department of Homeland Security was created in the aftermath of the Sept. 11, 2001 attacks as a response to federal agencies that did not cooperate or share advance information about the terrorists that could have led to the discovery of the plot. The merger of 22 border security, law enforcement and emergency response agencies orchestrated by Congress and the administration was viewed as the antidote to disjointed government efforts to secure the homeland.

DHS has been credited with improving airline passenger safety, shepherding seaports to follow through on security enhancements and tightening controls at ports of entry without significantly impeding travel and commerce. But many problems remain with intelligence and information sharing, border patrol and immigration enforcement, financial management, consolidation of terrorist watch lists, development of priority lists of potential terrorist targets, the process for disbursing federal homeland security grants to states and localities, and other areas.

Those problems will never get solved unless the department has the right command structure in place, according to a recent study by the Center for Strategic and International Studies and the Heritage Foundation that called on Congress and the Bush administration to overhaul the department's management before it becomes an entrenched bureaucracy resistant to reform.

In an end-of-year report, the DHS inspector general also identified "major management challenges" facing the department.

"The organization is weighed down with bureaucratic layers, is rife with turf warfare, and lacks a structure for strategic thinking and policymaking," the joint task force said. That is why the department is not nimble enough to adapt to changing terrorist tactics and has been slow to prepare disaster response plans or coordinate domestic security efforts with international partners for greater effect, the experts said.

In the rush to create the department, Congress and the administration created a management structure that instead of integrating functions actually prevented agencies from working well together, the study found.

> ***"The organization is weighed down with bureaucratic layers, is rife with turf warfare, and lacks a structure for strategic thinking and policymaking."***
>
> **Center for Strategic and International Studies, Heritage Foundation study**

The department is grouped into four primary directorates — Border and Transportation Security (BTS), Emergency Preparedness and Response, Science and Technology, Information Analysis and Infrastructure Protection — that have trouble coordinating with each other, said study co-chair James Carafano, a senior fellow for homeland security and defense at the conservative Heritage Foundation.

The report urged Congress to consider a package of reforms, including creating a flatter management structure, adding an undersecretary for policy, eliminating the Border and Transportation Security directorate, merging Customs and Border Protection with Immigration and Customs Enforcement and paring back the Transportation Security Administration to an operational agency solely focused on protecting travelers.

The task force comprises academics, think tank researchers, private sector officials and congressional staffers, among them Seth Stodder, senior counsel at Akin Gump Straus Hauer & Field and a former top policy advisor to Robert Bonner, commissioner of U.S. Customs and Border Protection — a DHS agency.

Management Reform. Streamlining management and policy development requires having two officials with the authority to coordinate operations and planning. The Heritage-CSIS team recommended that Congress define the job of the deputy secretary as equivalent to a chief operating officer in a private firm and eliminate the middle-management directorates for BTS, Emergency Preparedness and Response, Information Analysis and Infrastructure Protection, as well as the undersecretary for management, which it called unnecessary layers of bureaucracy. Agency heads and other key management officials — such as the chief information, financial and procurement officers — would directly report to the deputy secretary, in the same way that the Coast Guard does without having to go through the BTS directorate.

The Justice Department, for example, has a flat, lean organizational structure in which the FBI and other agencies report directly to the deputy attorney general. Michael Chertoff, President Bush's nominee to be secretary of homeland security, is familiar with that organizational model having served in the Justice Department as head of the criminal division from 2001 to 2003. It remains to be seen if he will seek to replicate that structure at DHS.

Juliette Kayyem, who heads the domestic security program at Harvard's Kennedy School of Government, thinks Chertoff's background will level the playing field between the Justice Department and DHS. In her opinion, Attorney General John Ashcroft never treated DHS Secretary Tom Ridge with any respect, and Ridge and his department suffered from a credibility problem.

"Ridge was like Gov. Football Player personality. Everyone loves Ridge, but did everyone respect him? Not everyone loves Chertoff, but everyone respects him. And I think that's going to be the difference," she said in an interview on the public radio show *The World*.

Ridge relies on a small group of policy aides compared with other departments, limiting him to dealing with crisis of the day and preventing the development of long-range strategy and scenario-based contingency planning, department critics have pointed out. The task force said policymaking is scattered throughout the department in the different agencies, some of which created policy shops of their own because there was no direction from the top.

DHS could avoid "managing by the in-box" if it established a unified policy planning staff headed by an undersecretary for policy who would oversee policy development and make sure programs fit the departments priorities and budget, the task force said. The undersecretary would report directly to the deputy secretary.

Carafano said DHS should model its lead-structure on the Defense Department.

"What we really need to do is to create

some undersecretaries who could do the integrating functions — like policy, acquisition — and then we need to have a COO, who needs to be the deputy secretary and underneath him there need to be a bunch of operating agencies who all work for him," Carafano explained on *The World.*

"The DoD has the battlefield commanders who do the fighting; and then we have force generating people for the services. We think that's the model for DHS. You have the guys who are out there doing it — operating agencies like CBP, Coast Guard; and then you have undersecretaries who provide support functions to make sure they have the people and the resources to get the job done," he said.

Some government scholars were calling 18 months ago for the department to create a larger policy office similar to one in the Defense Department where thousands of people are employed to tackle large strategic issues.

John McGowan once helped formulate DHS policy as director of cargo security and trade issues and said he favored many of the Heritage-CSIS recommendations except those calling for elimination of the undersecretary-level directorates and for agency heads to report directly to the deputy secretary.

A supervisor can have reasonable management control of many people if they are all part of one functional area doing the same job, "but if you have 35 people with disparate requirements to supervise, you're going to have a hell of a time deciding what piece to support next," said McGowan, now vice president of border security at Sandler & Travis Trade Advisory Services.

The directorates are helpful, he said, because they put like problems in like boxes. "I'm fearful if they remove the undersecretaries because there is no easy-to-understand wiring diagram" in the report about how the chain of command would look.

McGowan agreed that DHS needs to engage in more strategic thinking, but said that long-range planning ought to take place in directorates, such as BTS. The directorates and undersecretaries are where the subject matter expertise lies, are familiar with the agencies and programs, and serve as useful buffers.

"Flattening out the organization just to flatten the organization is not particularly useful," he said.

The department's international efforts are fragmented too among multiple offices, including the Office of International Affairs, the BTS Policy Office, CBP, Immigration and Customs Enforcement, Citizenship and Immigration Services and the Coast Guard, the report noted. DHS has several hundred people, including customs officers and attaches, serving overseas. But DHS offices in U.S. embassies tend to operate on their own and foreign governments may fail to partner with DHS because there is no single point of contact that pulls together DHS affairs in the international arena.

"As a result, DHS remains disenfranchised from the foreign policy apparatus" and is "poorly represented among important international organizations, including the European Union and the Organization for Security and Cooperation in Europe, which could play extremely helpful roles in homeland security," the report said.

James Carafano
senior fellow for homeland security and defense, Heritage Foundation

"What we really need to do is to create some undersecretaries who could do the integrating functions ... and then we need to have a COO, who needs to be the deputy secretary and underneath him there needs to be a bunch of operating agencies who all work for him."

Ridge, responding to an audience question after a Jan. 12 speech at CSIS, said the department is in the process of identifying a single DHS point man in each embassy, someone who the ambassador and diplomatic staff can turn to for answers about DHS programs and how to coordinate efforts with foreign governments.

Strengthening international capabilities requires the elimination of redundant roles between the Office of International Affairs and the chief of staff's office; realignment of DHS-wide international policymaking activity under an undersecretary; and conversion of the international affairs director to an assistant secretary under the undersecretary for policy, whose responsibilities would include dealing with the United Nations, NATO, the EU, the International Maritime Organization and the World Customs Organization.

DHS also has limited ability to coordinate a response to a terrorist attack with state and local governments and the private sector, according to the report, which recommended a DHS regional structure to support preparedness, response and critical infrastructure protection. Importers have expressed concern that a DHS plan in the works for a regional structure will create separate channels of communication for CBP port directors and undermine the CBP commissioner's ability to ensure customs policies are uniformly enforced. The report says DHS regional directors should not have authority over existing DHS agencies.

The task force also recommends enhancing the Homeland Security Advisory System by replacing a national alert with regional ones and specific warnings for different types of industries and infrastructure.

The department can meet the challenges of maintaining morale and retaining top personnel during its wrenching transformation by establishing an executive leadership program; recruiting qualified college students by following the model of the Defense Department's Reserve Officer Training Corps program; and aggressively recruiting top talent from the private sector, the task force said.

Roles, Missions. When DHS took over management of agencies with border, immigration and transportation security responsibilities from other departments, it did not clearly delineate the missions of agencies it was consolidating.

In a December draft paper for developing a national cargo security strategy, DHS acknowledged as much, saying the Homeland Security Act of 2002 that established the department, and the Aviation Transportation Security Act before that, created opportunities for overlap and redundancy, especially between CBP, the Transportation Security Administration and the Coast Guard. DHS officials said they are working to clarify jurisdictional issues and better align agency roles.

The task force called for the president to merge CBP with Immigration and Customs Enforcement and eliminate the Directorate of Border and Transportation Security, saying border security and internal immigration enforcement are inherently related functions that should be managed by one agency. The two agencies were created when the Immigration and Naturalization Service was disbanded and split up within DHS.

"Not one person has been able to coherently argue why the CBP and ICE were created as separate operational agencies," the report said. "Indeed, some have compared it


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to deciding to break up the New York Police Department into two separate agencies — one housing the uniformed 'beat' cops (analogous to the CBP's uniformed officers) and the other housing the detectives (analogous to ICE's plain-clothes investigators)."

One former DHS official, who did not want to be named, said he thought ICE and CBP were probably split so there wouldn't be a mega-agency with huge control and budget authority within the department, and agreed they could be put together.

In arguing for the elimination of BTS, which is headed by Asa Hutchinson, the task force said the directorate doesn't have the staff or infrastructure to integrate CBP and ICE operations on a consistent basis; lacks sufficient influence with the secretary to resolve policy conflicts between the two agencies or with other parts of the department; has not been able to clearly define the responsibilities of CBP and the Transportation Security Administration; and does not have authority over the Coast Guard. BTS's ineffectiveness has resulted in policy impasses over who should be in charge of programs such as the "smart box" initiative for tracking ocean containers and Operation Safe Commerce, which sponsored commercial field tests of promising container security technologies.

There is no need for a middle-management BTS layer if CBP and ICE are one agency, the task force concluded.

The group is also critical of the Transportation Security Administration, saying its authority over all modes of transportation has caused friction with agencies with prime roles in border security, such as CBP and the Coast Guard (January *American Shipper*, page 22). The CSIS-Heritage team called on Congress and the administration to strip TSA of its transportation oversight and infrastructure protection policy functions, and restructure it solely as an operational agency to protect airport travelers, or possibly other transportation segments.

The report highlighted reforms Congress can make to improve its oversight of DHS, including the formation of permanent homeland security committees in both the House and Senate with full jurisdiction over DHS and a separate process to examine and authorize expenditures. Bills authorizing homeland security and defense spending should be passed biannually instead of every year to allow for more stability in annual appropriations and give the agencies time to implement congressional directives.

Another December report from CSIS, this one written in conjunction with Business Executives for National Security (BENS), called congressional oversight of DHS "balkanized" and "dysfunctional."

Until recently, as many as 79 committees and subcommittees in the House and Senate oversaw some aspect of DHS operations. Department officials, the Sept. 11 Commission and other analysts criticized the arrangement because DHS officials had so much of their time tied up preparing testimony or responding to information requests from members of Congress.

Department, by comparison, has a budget 10 times greater than DHS but reports to only 36 committees and subcommittees. The two Armed Services Committees and four appropriations subcommittees handle the vast majority of oversight activities, the CSIS-BENS study pointed out. With so many senators and congressmen involved there is little incentive for members to develop any expertise in homeland security issues beyond their parochial committee domain.

"If you have 35 people with disparate requirements to supervise, you're going to have a hell of a time deciding what piece to support next."

John McGowan
VP of border security, Sandler & Travis Trade Advisory Services

A few months ago, the Senate permanently gave the Government Affairs Committee the added responsibility of homeland security, but with limited power over appropriations, intelligence and other matters that were retained by chairmen of other committees during a turf battle over the 2005 DHS appropriations bill.

And on Jan. 4, the House voted to create a permanent Committee on Homeland Security, but, as in the Senate, it will not cover all aspects of immigration, the Coast Guard, the FBI, first responders and intelligence. Its primary jurisdiction will be over government-wide counterterrorism policy and the counterterrorism mission of DHS. Opponents of a homeland security committee with broad powers, such as Don Young, the powerful chairman of the Transportation and Infrastructure Committee, said their committees had the pre-existing expertise to guide DHS and fought to maintain their power. After the vote, House members said there were still large gray areas about the scope of the committee's authority, including over transportation security.

The Republicans picked Christopher Cox of California to chair the committee. Cox previously headed the House Select Committee on Homeland Security.

Critics say the congressional restructuring amounts to cosmetic reform that will not improve oversight or national security.

DHS "is still responsible to everyone — which makes it responsible to no one," the CSIS-BENS task force said. The task force included Frederick Smith, chairman and president of Memphis-based FedEx Corp.

"Fragmentation also creates the conditions for mid-level subordinates to end-run the leadership of DHS and appeal directly to congressional committees with which they have longstanding relationships. It allows outside interest groups, single issue lobbies and government contractors to more easily find champions for parochial interest and pork barrel projects that fall outside the strategic mandate and intent of DHS," the task force said.

Congress should establish risk-based funding formulas for port security and other types of grants available to local authorities and the private sector instead of allowing DHS to dole out relatively equal amounts of money to applicants, the CSIS-Heritage analysts recommended.

Clark Kent Ervin, the department's former inspector general, also cited the port security grant program for needed improvement. In a report before his departure, Ervin said the program was not well coordinated with the Office Information Analysis and Infrastructure Protection and did not set priorities in the application review process, which resulted in funding port authorities and private companies that didn't merit assistance. DHS also does not properly follow up to make sure the grants are well spent, he said.

DHS could better prioritize where to spend its resources if it had a list of the nation's most vulnerable sites. Congress required the department to rank the terrorist threat to critical infrastructure, but the process continues to be stalled.

"As now constituted, the list is said to be a hodgepodge of sectors and sites with little apparent rhyme or reason other than politics," Ervin said in a Dec. 27 *New York Times* op-ed.

ABC News reported that thousands of targets on the list are not based on intelligence but because states, cities and counties did not receive proper guidance from DHS and are flagging amusement parks, libraries and even miniature golf courses as vulnerable in an effort to get more federal funding.

President Bush and Congress should establish a commission to assess the capabilities of the department within six months, followed by legislation in the following session to restructure the department, the CSIS-Heritage team concluded. ■

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Retailers are skittish logistics shoppers

Face cost fears by embracing shared channels, selective service cuts.

By Robert Mottley

U.S. retailers these days are as skittish as cats huddling under a leaky tarpaulin, trying to keep dry in a rainstorm.

Chief among elements pelting retailers are the rising costs of truck fuel, fears that just-in-time deliveries could mean too little inventory on hand in a crunch, and increasingly finicky demands from customers.

American Shipper asked Steve Gundlach and Mike Killius, two retail-oriented executives at TNT Logistics, a third-party logistics services provider, to discuss why there is widespread angst in an improving economic climate.

"When we have our quarterly, face-to-face reviews with retail clients, they always start with costs," said Gundlach, general manager of fast-moving consumer goods/retail at TNT Logistics.

"Clients look for reduction and stability in costs. What's hitting them right now is diesel fuel — the price at the pump, and the impact that's having, either as a fuel surcharge from 3PLs handling their business, or as a pass-through cost, an actual expense," he explained.

A year ago, "we were looking at $1.60 a gallon for diesel fuel. Now, that's $2.55 a gallon," Gundlach said. "There's no choice — goods have to move, more and more by truck, since standby rail options aren't appetizing for many retailers because of delays on trains. It's frustrating, given pump prices, but that's reality."

Owner-operators who run their own trucking businesses "can't afford a 27 percent to 40 percent annual increase in fuel costs," said Killius, director of business development, fast-moving consumer goods/retail, for TNT Logistics.

"So far, although everyone complains, I'm amazed that the fuel issue hasn't had a greater impact on pricing in the last couple of months, Killius noted.

"Carriers never bill retailers a fuel surcharge quickly enough, and they never take it back fast enough. It's interesting how that ebb and flow works," he said.

Steve Gundlach
general manager, TNT Logistics

"We have to go back to why a 3PL exists. The retailers' core competency is to sell. Ours is to get the product where it needs to be, on time, by the most cost-effective means."

"As a third-party logistics provider (3PL), if we priced our business without some coverage on that fuel surcharge, we'll be out of business in very short order," he said.

Retailers are also complaining about the rising cost of ocean carriage. "The sea leg has become as acute an issue as the downstream, landside portion of an intermodal shipment," Gundlach said.

"More retailers are coming to 3PLs saying, 'we were concerned last year about our less-than-truckload shipments. Now, we want you to help us with container management, freight forwarding and such, since more of our products are coming in from abroad.' As a result, a 3PL today will pick a retailer's ocean carrier, forwarder, and perhaps a non-vessel-owning common carrier as facilitators for a through shipment," Killius said.

Service Cutbacks. The hurdle for a 3PL is to save a retailer "money in addition to the money you saved them in the last quarter," Gundlach said, noting that the squeezable cash ball gets tighter each time.

"I can't change the price of diesel fuel. What we recommend, more often than not, is that a client cut back slightly and selectively on customer service," he said. "A lot of retailers are beginning to question how much they can afford to spend to sustain luxury services."

Instead of serving a particular area five days a week, costs can be reduced substantially by servicing it four times a week. "You're putting fewer miles on your contracted trucks," Gundlach said, explaining that such a one-day delay might impact only 2 to 3 percent of a retailer's customer base.

Home Depot, Sears, and General Electric are among TNT Logistics' larger customers. "All of them are constantly looking for ways to reduce labor costs," Gundlach said.

There are smaller retailers that have gained competitive edge by guaranteeing same-day or next-day delivery service, whichever a customer wants. They actually target larger retail chains that have had to cut back on service.

"Retailers are also thinking about capacity issues," Killius said. "If you're a retailer facing seasonal spikes, you depend on the ability of your providers to cover those peaks.

"I had one retailer who didn't want to change to a lower-cost provider because the company feared that provider wouldn't cover the retailer during the peak period, because its focus would be on larger, more strategic accounts," he explained.

The retailer decided to spend more money to get the desired coverage, Killius noted.

Gateway Congestion. Port capacity has also become a vexing issue, as more retailers source their products offshore.

A decade ago, retailers reported that 70 percent of their companies' products were made in the United States and 30 percent offshore.

"Then, that ratio became 60-40. Now it's 40-60. That's going to create an ever-larger logjam on the West Coast. The ports in southern California, in particular, don't have a sound solution to fix their labor management problems that caused 2004's congestion," Killius said.

"I had one retailer who actually wrote a letter to the longshoremen's union on the West Coast and said, 'if you don't stop this insanity, we're going to pull out and move to an East Coast port. We know that will

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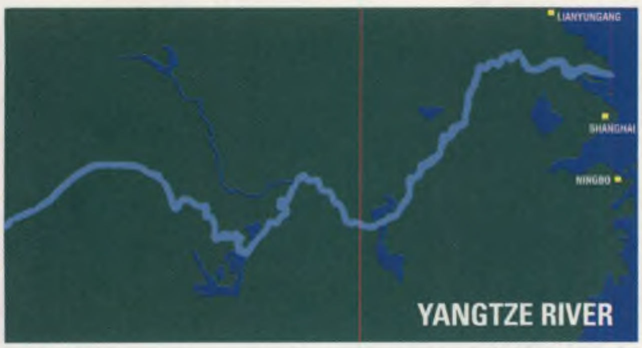

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cost us more in some areas, but we cannot allow continual disruption of our supply chains.' I'm not sure that the union ever replied," he said.

Gundlach agreed that retailers were very concerned in 2004 "about congestion on the West Coast that added several days to what was already a long shipment time from China," Gundlach said.

"If you've done everything correctly but the last mile, and the shipment isn't there, then it's all for naught," he added.

All in all, "retailers' rising transportation costs are mitigated because they can buy their products offshore for so much less," Killius noted.

One retailer recently told Killius that 'we can have a particular product made in South Korea and shipped all of the way over here for one-third of what it costs to manufacture that same product in the U.S.'

Contingency Plans — Or Else. Shippers routinely blame 3PLs for market forces that 3PLs can't control. "They expect us to have contingency plans in place to correct whatever time lapses occur in shipments, however they are caused," Gundlach said.

"For example, if there's congestion in California, a shipper in the heartland may want you to make arrangements to bring the goods in through a port in Georgia, or through Seattle and then east by double-team drivers," he said.

When costs go above a contracted limit out of the box each party absorbs a portion of the excess expense.

"Many retailers understand that a long-time outsourcing relationship is critical. You don't normally see such a rapport with a 3PL terminated solely because diesel fuel prices have increased," Gundlach said.

"Still, a lot of lose-lose scenarios have been price-driven," he added, noting that a growing number of retailers are ruthless about dropping 3PLs that don't please them.

"We have to go back to why a 3PL exists. The retailers' core competency is to sell. Ours is to get the product where it needs to be, on time, by the most cost-effective means," Gundlach explained.

"The level of 3PL service expectations from retailers and end-users is increasing every year," Killius said. "The bar is being raised to the point that some cost savings-vs.-service goals are almost unattainable. That puts more pressure on the delivery end of the supply chain."

For example, trucking lines "are not looking for new drivers because they can't find them. Yet they don't have iron sitting against a fence, because the demand for trucks is greater than their ability to cover it," Killius said.

Despite the burgeoning driver problem, U.S. retailers often favor trucks because they believe railroads have not been very dependable.

"In Canada, retailers prefer railroads, which are better at keeping schedules than their U.S. counterparts. Perhaps it helps that Canadian supply chains are 4,000 miles long and 100 miles wide," Gundlach said.

In the United States, "we have seen more retailers using 3PLs with the ability to bloc-book rail cars at cheaper rates," Killius explained.

Mike Killius
director of business development, TNT Logistics

"I had one retailer who actually wrote a letter to the longshoremen's union on the West Coast and said, 'if you don't stop this insanity, we're going to pull out and move to an East Coast port."

Some retailers, however they ship product, still underestimate the effect of delayed shipments because they are seduced by bargain prices.

In one well-known horror story from 2004, a dozen containers of artificial Christmas trees arrived too late for the Yule season. The trees will have to be stored for a year — a landed cost that will wipe out the retailer's attractive initial price.

"That's why more retailers are shifting their attention from sales and marketing to logistics, and why so many of them have become much savvier about their supply chains," Killius said.

"You can know what to buy and how to price it, but if you can't get your product to where it needs to be at a reasonable cost with some confidence, then your whole business is undercut," Gundlach said.

Shared Channels. When all else fails to lower costs, more retailers are forming pragmatic bonds with their competitors.

"I continue to see the industry changing. A few years ago, there were a lot of dedicated warehouses. Today, all I hear about are shared channels," Gundlach said.

The savvier retailers are saying to 3PLs, "I've become a believer now that you can only cut your costs to this point. I know you have to make a buck. However, tell me what the impact will be if I share my resources or assets with someone else."

"Surprisingly enough, with large 3PLs that have multiple retail customers, there are combinations that can be put together which are non-competitive," Gundlach said. "For example, if we have two client companies, one of them selling tools and the other end tables, at the end of the day both products come in a box. If we need warehousing space — more cross-dock area to break down products coming in — there's no reason not to share that space."

In the furniture industry, especially, competitors will soon be sharing the same trucks to reach end-users. "That's the market reality. What's taken us there has been cost savings," Gundlach noted.

Beware What You Ask For. Just-in-time deliveries are proving so efficient that retailers worry about being caught short of products.

"Safety stock is always an issue," Killius said. "A retailer can cut his costs by managing inventory better, but that same retailer's lifeline is having product on the floor. If it's not on the floor, he or she can't sell it."

One solution is to have "more inventory en route on ships than would be normally the case," he said. That costs "a little more," and will be even more expensive in the future because ocean carriers are not fond of having their vessels used as floating warehouses.

Retailers who use vendor-managed inventory also worry about shipment times from suppliers' facilities to their stores "with good reason," he added.

Gundlach was more optimistic on the issue of inventory. "Everyone has a pretty good idea of what stock-keeping units (SKUs) are their best-selling items. From that, they determine the shelf life or turns of that product, and replenish accordingly," he said.

"I think that retailers today are almost as good as the auto industry when it comes to identifying 'just-in-time' inventory challenges," he continued. "You see more retailers beginning to identify how long a product has sat on a shelf, how often people are buying it, and how long it takes to get a replacement in a store after a sale."

"We run some distribution facilities that

are 'limited stocking centers,' basically holding tanks that replenish regional grids of stores," he said. "For example, if you're selling a chainsaw, you may have only one or two models on your shelf. However, within a four or five-hour travel area, there will be a large distribution center that can bring in one or two more chainsaws the next day if you need them.

"What you don't see these days is a retailer keeping 30 or 40 chainsaws on the premises waiting for possible customers."

Innovative Solutions. Asked if more U.S. retainers were using free trade zones to park inventory that would later go into public commerce, Gundlach said, "some are doing that. Other retailers have formed their own import-export companies to take advantage of certain times of the year when small island countries have no taxes on exports to the U.S."

The end result is that "a little piece of business for them, which used to be maybe \$2 million a month, can during those tax-free periods increase by 100 or 200 percent," Gundlach said.

"Retailers will wait to place their orders for those tax-free periods, and they do that for products as varied as a lawn tractor, a tub, or plumbing supplies," he said.

However retailers direct their concerns, the bottom line is that they want at least minimum inventory for walk-in customers.

Here's how Home Depot has partially solved that problem, according to sources who asked not to be identified because of Home Depot's aversion to publicity.

Home Depot is now the third-largest seller of appliances in the U.S., a status the company attained almost overnight because it has been able to put appliances in 2,500 stores.

"They didn't want to have all of those stores loaded up with inventory on hand, because they didn't know what appliances would move in the market," said one source.

So, Home Depot worked in consort with General Electric, setting up in a logistics network called "Depot" in large population areas.

That network allows GE to provide Home Depot inventory as it is sold. For many orders, an appliance will leave a GE cross-dock for delivery directly to a Home Depot customer.

Preparing For Worst. There's also a concern among U.S. retailers to have enough of an inventory buffer for consumer staples "should the nation's borders be closed to trade because of a terrorism-related incident," said Steve Spiwak, an economist with Retail Forward Inc., a consulting and research company in Columbus, Ohio.

"That buffer means about a week's worth of goods," Spiwak told *American Shipper.* "That would cover a two-day closure of ports and borders and the 'catch-up' logistics activities necessary to bring supply chain operations back to normal."

However, a longer closure, "such as one that might follow the explosion of a 'dirty bomb' in a shipping canister, could provoke a run on supermarkets for staples across the nation and cause widespread panic among consumers," he said.

Status Of RFID. Retailers have, in varying degrees in early 2005, embraced passive radio frequency identification (RFID) tags for stock taking and inventory identification within a modest range.

This year, more shippers will be using active RFID tags, which greatly increase the range that packages can be located and tracked.

"Active RFID has been around for ages. It has become fashionable again as technologies are combined in new ways," said Peter Ward, RFID sales leader for IBM Global Services.

Nigel Montgomery, European director for AMR Research, explained that passive and active RFID technologies will continue to coexist for particular applications. "It's not a Betamax/VHS issue," he noted.

Montgomery told *The Financial Times* that he had met recently with 35 consumer product companies in Boston. Of that number, although two-thirds had run trials of RFID technology, only one company had found a model that produced a return on investment.

"To generate real value from RFID, companies must look beyond compliance and even benefits from asset-tracking accuracy," Montgomery said. "They should use RFID to gather intelligence that enables them to interact better with customers and streamline processes throughout the organization."

Allied Business Intelligence estimates the global market for RFID technology to be \$2.2 billion by 2007, up from \$1.3 billion in 2004. Still, in the United States, "many retailers remain cautious of spending more than incremental amounts for RFID tags and readers," Gundlach said.

In Europe, a few companies have begun using active RFID tags to track employees who move stock or produce around a distribution facility or supermarket floor. In some supermarkets run by Jumbo, in the Netherlands, active RFID technology will be used for the first time this year to track customers via tags affixed to shopping carts.

Brave New Apparel World. U.S. retailers of apparel and textile goods are literally doing business on a clean slate after a 40-year-old regime of quotas ended Jan. 1 for goods shipped between member nations of the World Trade Organization (WTO).

In the first weeks of the New Year, it is too early to determine if market disruptions predicted by beleaguered U.S. domestic textile manufacturers will in fact be caused by a flood of apparel imports from China.


Jones

"What is known at this time is that many ships have sailed for the U.S. after the year changed," said Laura Jones, executive director of the U.S. Association of Importers of Textiles and Apparel (USA-ITA). "Importers are clearly anxious to take advantage of the new trading world."

On Dec. 30, one day before quotas ended, the U.S. Court of International Trade in New York temporarily barred the Bush administration from imposing new limits on Chinese apparel imports. Domestic manufacturers immediately asked for an expedited appeal (see related story, page 8).

That injunction, if upheld, would in all likelihood allow safeguard-free imports from China for at least the first half of 2005. Another factor in a very murky puzzle at the beginning of the year is the effect of China's own imposition of an export tax on clothing. If the export duty is substantial, then cheaper Chinese textiles will be less competitive.

Meantime, importers are tracking quota-free shipments to the United States from all textile and apparel producing nations. "We don't know what those figures will show," Jones said. "Anything can happen." ■

Egypt implements QIZs

U.S. apparel importers expect to benefit from 'qualified industrial zones,' a duty-free trade program.

By Chris Gillis

A special duty-free trade arrangement between Egypt and Israel and the United States promises to help keep Egyptian garment makers afloat as China strengthens its position in the global textile and apparel market.

The arrangement, which U.S. Trade Representative Robert Zoellick called the "most significant economic agreement between Egypt and Israel in 20 years," is a byproduct of the 1996 U.S.-Israel Free Trade Agreement. It specifically allows for the creation of "qualified industrial zones," or QIZs, between Israel and Egypt, and Israel and Jordan.

For a QIZ article to gain duty-free entry into the United States, QIZ factories must add at least 35 percent to the value of the article through a combination of material inputs from Israel, Egypt and the United States.

The United States recently approved the request of Egypt and Israel to designate three QIZs — the Greater Cairo QIZ, the Alexandria QIZ, and the Suez Canal Zone QIZ that includes an industrial area of Port Said. More sites may be added in the future.

The program has already shown some success in Jordan. Since 1999, the United States has designated 13 QIZs in Jordan. The United States and Jordan negotiated a full free-trade agreement that Congress approve in 2001. According to the Bush administration, exports from Jordan to the United States have increased from $31 million in 1999 to $674 million in 2003.

The Bush administration calls Jordan's QIZs "the country's strongest engine of job growth." It's estimated that Jordan's QIZs have generated more than 35,000 jobs. Investments in these QIZs are between $85 and $100 million and should increase to almost $200 million.

"These industrial zones will create daily opportunity to build business and personal relationships among Egyptians, Israelis, and Americans," Zoellick said in a Dec. 12 statement. "Our successful experience with Jordan suggests that establishing QIZs in Egypt will significantly expand trade, promote investment, and create hope."

Egypt's Minister of Foreign Trade and Industry Rachid Mohamed Rachid said at a Dec. 14 press conference in Cairo that the QIZ program is "consistent with the government's effort to open up the economy, increase growth rates, and help job creation, and promote exports.

"It confirms our determination to move forward on all aspects of serious economic reform and to integrate Egypt into the global economy," he said.

Robert Zoellick
U.S. Trade Representative

"These industrial zones will create daily opportunity to build business and personal relationships among Egyptians, Israelis and Americans."

Apparel Importers. While just about any product can be manufactured in a QIZ, apparel and textiles manufacturers and importers are expected to be the main beneficiaries of the program.

"It took the garment and apparel industry to move (the Jordan QIZ program) forward," said Thomas G. Travis, partner with law firm Sandler, Travis & Rosenberg, recently to a group of apparel importers in Washington. "I'm looking forward to that with respect to the Egyptian QIZ."

Apparel and footwear are imported into the United States at high duty rates. Apparel and textile producing countries, such as Egypt, are also concerned about the impact of the elimination of global textile quotas at the end of 2004, and whether they can survive the competition from China.

Travis said, in addition to the elimination of duties, the QIZs could help Egyptian garment makers remain competitive and protect or reclaim their U.S. market share after the quotas are eliminated.

Egypt has the most comprehensive textile industry in the Middle East and North Africa, and is considered the only country in the region with access to fibers, as well as spinning, dyeing and finishing equipment to efficiently sustain this type of business. Egyptian garments are also highly regarded by U.S. importers.

In 2000, the U.S. government made an effort to stimulate trade and investment in the sub-Saharan African textile industry through the passage of the Africa Growth and Opportunity Act (AGOA). Prior to the legislation, the textile and apparel business in Africa faced strict tariff controls for entering goods into the United States.

But many African shippers and industry analysts believe AGOA has fallen far short of its goal to stimulate sub-Saharan Africa's fledgling textile and apparel industry. It's also questionable how many of the firms that have benefited from AGOA will survive after the textile quotas are eliminated.

"AGOA is inferior compared to the QIZ program," Travis said.

For a QIZ product to qualify for duty-free entry to the United States, it must meet several requirements.

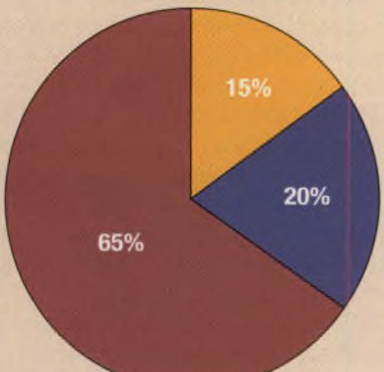
First, the product must be grown, produced or manufactured in the QIZ. In the

Approved qualified industrial zones (QIZ) in Egypt

QIZ	Factories in QIZ	Industrial Zones in QIZ
Greater Cairo QIZ	El-Badrasheen Cairo Cotton Center E.T.C. Samir Flaneles Delta	Tenth of Ramadan Fifteenth of May (Helwan) South of Giza Shobra El-Khema Nasr City
Alexandria QIZ		El-Amira (Bourg El-Arab), Alexandria
Suez Canal QIZ		Port Said Industrial Zone

Source: Sandler, Travis & Rosenberg P.A.

Meeting Egypt QIZ 'minimum value content' requirement



To satisfy this standard, the cost of materials produced in a QIZ, West Bank, Gaza Strip or Israel, plus the direct costs of processing operations performed in a QIZ, West Bank, Gaza Strip or Israel, must equal 35 percent of the appraised value of the goods imported into the United States.

- U.S. materials may account for up to 15 percent of the appraised value of the imported goods.
- Foreign materials may be used if they undergo a "double substantial transformation" (i.e. foreign fabric that is cut and assembled in a QIZ).

Source: Sandler, Travis & Rosenberg P.A.

case of garments, fabric components must be assembled together or the product of "knit to shape" in the QIZ.

Second, the article must be imported to the United States directly from the QIZ, or elsewhere within the U.S.-Israel Free Trade Agreement, including the West Bank and Gaza Strip.

Lastly, at least 35 percent of the appraised value of a product at the time it enters the United States must be related to materials produced and direct costs of processing operations performed, in the U.S.-Israel Free Trade Agreement region.

The agreement between Egypt and Israel requires that at least 11.7 percent of the value of the covered products must be Israeli. U.S. materials may account for up to 15 percent of the appraised value of the finished goods.

While it's too early to tell how successful the Egyptian QIZs will be, some U.S. apparel importers believe they hold promise.

"In order to serve our customers well it is very important to stay on top of the areas that will produce quality products with on time delivery and with very competitive pricing," said Frank Matteucci, president of Raftco International, a Centreville, Va.-based apparel-sourcing agency. "The QIZ should provide competitive prices and there is quality work being assembled in the QIZs."

From a U.S. importer standpoint, the process for dealing with QIZs should be straightforward, proponents say. "Paperwork is not difficult and compliance should be easier than many other countries," Matteucci said.

Step To MEFTA. Overall, the Bush administration views the development of the QIZs in Egypt and Jordan as a steppingstone to establishing a U.S.-Middle East Free Trade Area (MEFTA) by 2013. President Bush announced the initiative in May 2003.

To support this initiative, the administration said it would actively support World Trade Organization membership for those peaceful countries in the region that seek it.

The United States has made efforts to expand its Generalized System of Preferences program to increase U.S. trade links with the Middle East. Six of the 140 countries included in the program, including the West Bank, are located in the Middle East.

> ***"It took the garment and apparel industry to move (the Jordan QIZ program) forward. I'm looking forward to that with respect to the Egyptian QIZ."***
>
> **Thomas G. Travis**
> *partner, Sandler, Travis & Rosenberg*

According to the administration, U.S. companies imported about $300 million worth of products from the Middle East under GSP, including Egyptian furniture, Omani jewelry, and Lebanese olive oil.

The Bush administration has also stepped up its efforts to negotiate Trade and Investment Framework Agreements (TIFAs). The United States has TIFAs in place with Bahrain, Egypt, Tunisia, and Algeria. The administration said TIFAs lead to free trade agreements.

"Eventually, these bilateral FTAs (free trade agreements) will be expanded into sub-regional FTAs by bringing in willing countries that demonstrate a commitment to economic openness and reform," the administration said. "Within a decade, the U.S. hopes to meld these sub-regional FTAs into an historic regional Middle East Free Trade Area: a mutual commitment for openness among the United States and the nations of the Middle East and Mahgreb."

The Bush administration said it would continue its strategy of "trade capacity building" to help the Middle East's poorest countries. The Middle East Partnership Initiative will target more than $1 billion of annual funding from various federal government agencies and encourage partnerships with business that support trade and development, the administration said. ■

Working smarter with capacity issues?

Information technology systems could make a difference in capacity-constrained operating environment.

By Philip Damas

Not enough international shipping capacity? Difficulties securing over-the-road and intermodal capacity at low costs? Trouble assessing the trade-off between service and cost?

Part of the answer to these increasingly common problems, analysts say, is to use "optimization" tools to manage the capacity and service constraints as best you can.

Optimization is a technique that uses linear programming and mathematical algorithms to resolve problems with numerous variables and constraints.

Information technology providers say business organizations generally do not have people with the skills to develop optimization tools.

"Many customers are caught without this technology," said Greg Johnsen, vice president of products and marketing at GT Nexus, a logistics IT firm based in Alameda, Calif. Johnsen, a linear programmer by training, said GT Nexus can incorporate a shipper's criteria and requirements to define "an optimal allocation plan" to move cargoes with multiple carriers on specific routes.

GT Nexus also automates procurement bids for shippers. To do that, the shipper defines the criteria for the bids and the dollar value of each service attribute (for example, frequency of service, fast transit times or the avoidance of demurrage costs). Johnsen noted that the standardized procurement system of GT Nexus is not an auction platform, but allows the shippers to analyze hundreds or thousands of potential shipment combinations.

"The customer can have several scenarios for allocation — for example a low cost scenario, a medium cost one and a high cost/high service scenario," he explained.

"Capacity constraints are creating more uncertainty," said Adrion Gonzales, consultant with ARC Advisory Group, based in Dedham, Mass.

Gonzales believes that, as transportation capacity continues to tighten, shippers are re-evaluating their transportation networks

Greg Johnsen
vice president of products and marketing, GT Nexus

"When you talk about cost, it (should) include the hidden costs, such as the cost of poor service, the cost of slow transit times, the cost of insufficient capacity ... It's not just freight rates"

and strategies, including by using Transportation Management Systems (TMS).

Gonzales relates that he recently met a transportation executive of PepsiCo at a conference. This executive joked that his company is used to facing transportation capacity shortages every day.

"Demand has outstripped supply," Gonzales said.

The shortage of drivers, exacerbated by stricter hours of service regulations, is well known in the United States. A lack of capacity has also become common in international air cargo and maritime transportation, particularly during the annual peak season.

"The (ocean) carriers definitely have capacity issues," Johnsen said.

Better Decisions. Transportation Management Systems help shippers make decisions such as shifting transportation modes, choosing another port of entry, or moving to a dedicated truck fleet, Gonzales said.

At the basic level, a Transportation Management System "is a repository of data that allows you to get a better understanding of your transportation network," Gonzales explained. Such systems help a company analyze where variations in operations occur, for example, by showing that an expected lead-time of five days has turned into actual lead times of three to 15 days.

The next step for the supply chain manager is to find the causes of the variations. Gonzales gave examples such as incorrect paperwork leading to customs delays for internationally traded goods, or an inefficient appointment system for trucking operations.

GT Nexus said its "analytics" IT module provides data on the performance of carriers and whether the selected capacity allocation plan is being implemented as planned.

GT Nexus, which operates the GTN multicarrier portal, captures data on actual shipments through the portal or by receiving shipment instruction data from other entities associated with the shipments, such as the shipper or third-party logistics provider.

"You can see whether carriers are meeting their capacity commitments to you," Johnsen said. For example, "there is a disconnect" if a shipper has allocated 50 percent to APL on a given route but its consolidator have only shipped 10 percent with this carrier, Johnsen explained. The consolidator or forwarder, who is generally responsible for implementing the allocation plan, must then correct the situation.

Can the GT Nexus technology minimize cost increases for shippers? "It certainly isn't going to bring rates down," Johnsen answered. "It will bring the customer the best trade-off."

For example, a shipper will know the value of obtaining guaranteed capacity for an extra 20 slots during the peak shipping season, said Gary Frantz, spokesman for GT Nexus.

Johnsen stressed: "When you talk about cost, it (should) include the hidden costs, such as the cost of poor service, the cost of slow transit times, the cost of insufficient capacity ... "

"It's not just freight rates," he added. Therefore, it is important to quantify the hidden costs, the IT firm argues.

Variability, Unreliability. One problem that keeps supply chain managers on their toes is the issue of "variability" of logistics.

If the flow of goods cannot be predicted accurately, then it throws much of the supply chain plans into disarray.

"Variability isn't something you focus

Adrion Gonzales
consultant, ARC Advisory Group

"The technology is there to work around the physical constraints. The technology cannot overcome the physical restraints."

on during (ocean) carrier bids," Johnsen said. But variability can force a company to increase its buffer inventory to function at the expected level.

Weeklong delays in moving inbound containers via the ports of Los Angeles and Long Beach during the 2004 summer/fall peak season provided a graphic example of variability in transportation links.

Johnsen said the GT Nexus system produces "lead time variability reports."

"That data gets be used further up, in supply chain planning" to determine inventory levels, he added.

But Johnsen suggested that many companies do not integrate the work of their transportation staff with that of supply chain planners.

Renew Software Spend? In 2004, many firms held back spending on software for supply chain management.

Manugistics and i2, two major providers of supply chain systems, have seen a decline in their 2004 revenues.

In the third quarter, Manugistics' revenue dropped 25 percent to $45 million, as the IT firm reported a loss of $13.3 million. In the same quarter, Dallas-based i2 Technologies saw its revenue decline to $111 million, from $117 million in the third quarter of 2003.

But ARC Advisory Group has predicted that spending on Transportation Management Systems will rise in 2005. The consultancy firm is forecasting that the Transportation Management Systems IT market will grow at an annual rate of about 7 percent over the next five years, from $873 million in 2003 to more than $1.2 billion in 2008.

"There are still many companies that … do not have a Transportation Management System solution, or that had a Transportation Management Systems designed in the late 1990s," Gonzales said. Such companies will need to replace their transportation systems, he added.

"We think this is a year when service issues (in international shipping) are becoming very acute," Johnsen said. To address these problems, GT Nexus believes shippers will need to act quickly.

Shippers can work with primarily domestic Transportation Management systems or more international systems like that of GT Nexus, Log-Net and G-Log. The latter systems can also be linked into a wider Transportation Management system.

Johnsen said that a Transportation Management system will take every order and generate a shipment plan that can incorporates data from a third-party system.

He believes that part of the value of a shipment plan is that it can be shared among several entities involved in the shipping operations through a collaborative network.

But there is no doubt that some causes for delays or problems in transportation will be outside the control of the shippers.

"The technology is there to work around the physical constraints," Gonzales noted. "The technology cannot overcome the physical constraints." ■

U.S. freight financing program emerges

Ex-Im Bank, MarAd officials say goal is to move more shipments on U.S.-flag ships.

By Chris Gillis

The U.S. Export-Import Bank and Maritime Administration are preparing to roll out a program in February to provide Ex-Im Bank-guaranteed working capital loans for exporters, freight forwarders and other logistics services providers involved in ocean freight transportation.

Under the agreement, announced in October, Ex-Im Bank can provide working capital loans to export service providers, enabling them to extend credit terms to their export clients. The bank will also increase its working capital guarantee from 90 percent to 95 percent for U.S. companies that ship on U.S.-flag ships.

In addition, Ex-Im Bank and MarAd agreed to raise the minimum threshold for Ex-Im Bank-guaranteed U.S. export transactions that must use U.S.-flag vessels from \$10 million to \$20 million.

"There are companies that are viable and well established, but may be thinly capitalized," said Wayne L. Gardella, vice president of domestic business development for the Ex-Im Bank. "We would guarantee transactions they wouldn't normally do on their own. We can take a little more risk than a traditional bank."

The Ex-Im Bank provides working capital guarantees to pre-qualified commercial banks and lenders. They, in turn, provide working capital loans to exporters, shippers or their logistics service providers as shown on the U.S.-flag vessel ocean bill of lading.

There are five primary eligibility requirements for the program:

- Applicants must be located in the United States.
- Exporters must have one-year operating history.
- Forwarders and other intermediaries must have three years operating history.
- Cargo must not have military or nuclear applications.
- Cargo must move on a U.S.-flag vessel.

Ex-Im Bank and MarAd say the main benefits of the program are:

- Additional liquidity over normal credit lines.
- Longer term loans that might not be commercially available.
- Financing for operations that might not be commercially acceptable, in other words, "sound but non-mainstream projects."

Officials at both agencies believe the biggest beneficiaries of the program should be forwarders.

"Forwarders control a lot of freight and end up financing their customers, and in this business efficient cash flow is the goal," said Thomas W. Harrelson, director of MarAd's Office of Cargo Preference, in an interview.

While the transportation freight-financing program was in development, Ex-Im Bank and MarAd officials met with members of the U.S. Exporters Competitive Maritime Council (ECMC) to seek their input and ideas. The council has about 30 company members including some of the world's largest manufacturers of petroleum, chemical, power generation and infrastructure improvement equipment.

"We suggested not just ocean transportation costs be included in the program," said Greg Gowans, manager of logistics for Alstom Power, and ECMC chairman. "It's difficult to separate ocean transport from other transportation logistics activities such as port operations, container handling and inland transportation. That's why we encouraged freight forwarders to be included in the mix."

Large project shippers will generally seek their own lines of credit for moving cargo overseas, but small to midsized shippers rely mostly on forwarders to manage these tasks. Smaller project shippers "need to be served too," said Jim Cook, manager of logistics at Black & Veatch, and president of ECMC.

"This agreement is a win for American labor and business, a win for freight forwarders, and a win for U.S.-flag carriers," said Maritime Administrator William G. Schubert in a statement. "By providing credit terms and more access to working capital for small to medium U.S. exporters and their logistics service providers that ship on U.S.-flag vessels, will make them more competitive and create more U.S. jobs."

For MarAd, the more exporters and forwarders who take advantage of the program the more cargo that's made available to U.S.-flag vessel operators. The program supports MarAd's mission to promote a viable and sustainable U.S. merchant marine.

According to MarAd, raising the exemption level \$10 million to \$20 million for the transportation freight-financing program should cost the U.S.-flag vessel industry an estimated ocean freight revenue loss of about \$6 million. Using the \$6 million estimate at the current world average container rate of \$2,450 per container, MarAd projects the new program would have to generate about 2,500 new containers for U.S.-flag vessels to break even. "I fully expect that goal will be surpassed easily as exporters and forwarders become aware of the new program," Harrelson said.

MarAd estimates that there were 3.7 million full containers exported from the United States in 2003. The U.S.-flag market share was 6.7 percent or 247,000 containers exported. "By adding the 2,500 containers to the 247,900 exported containers would yield 250,400 containers. Then subtract that from the total leaves us a potential new market of 3.5 million containers to penetrate with this new program and attract them to the U.S.-flag carriers," Harrelson explained. "If we were to gain just 5 percent of the new market it amounts to 172,480 additional new containers of cargo on U.S.-flag vessels."

"This program should be viewed as a tool for the U.S.-flag carriers to use in their marketing to shippers and forwarders," said Dennis J. Brennan, senior trade specialist for MarAd's Office of Cargo Preference.

Project cargo forwarders and ocean carriers contacted for this article said it was too early to comment on the benefits of the Ex-Im Bank's new transportation freight-financing program.

The ECMC praised Ex-Im Bank and MarAd for consulting the industry on the development of the program. "Ex-Im Bank made a determined effort to reach out to the industry to understand what they can do to promote their goals and industry's goals, which are ultimately to promote export trade," Gowans said.

Ex-Im Bank will provide training about the new financing program to partner commercial banks throughout the country, and will join MarAd officials in promoting the program at large industry conferences during the year. For more information, access the Web sites of Ex-Im Bank (www.exim.gov) or MarAd (www.marad.dot.gov). ■

Bonus C-TPAT to include green lane

CBP offers 'immediate release' for U.S. importers that expand security compliance to highest levels.

WASHINGTON

U.S. Customs and Border Protection this year will begin providing U.S. importers who demonstrate willingness to go beyond minimal security guidelines and best practices to secure their supply chains a "green lane" through customs for virtually all their shipments, Commissioner Robert Bonner said Jan. 13 in a briefing with reporters.

That means "no inspection upon arrival — immediate release" for companies in the Customs-Trade Partnership Against Terrorism trusted shipper program that adopt the highest levels of security controls, Bonner said. C-TPAT is a voluntary program.

CBP has always promised fewer cargo exams for certified C-TPAT companies, but Bonner said he was ready to take the program to the next level, or "C-TPAT plus," as an incentive for low-risk shippers to do more. During the Customs Trade Symposium in Washington, CBP distributed a copy of its C-TPAT strategic plan in which the agency said it was exploring options to provide tiered-benefits to C-TPAT member companies.

Bonner said CBP security programs and confidence in certain shippers has evolved to the point that a "green lane" is now feasible. Top-drawer companies have sufficiently removed risk from their supply chains, allowing CBP to devote resources to shipments about which the agency has less knowledge.

"We know many companies out there that when they commit to something they are going to do it," Bonner said.

Companies seeking the highest tier of benefits will have to ship their products through foreign ports doing outbound exams of cargo under the Container Security Initiative and use so-called "smart box" technology that can detect and record whether tampering has occurred with a container seal after being affixed at the point of origin, Bonner said.

Many companies have complained they are not noticing tangible benefits in the form of reduced levels of cargo examinations.

Bonner repeated previous agency numbers that shipments of certified C-TPAT members are six times less likely to undergo contraband enforcement and antiterrorism security exams and four times less likely to be scrutinized for trade-related compliance issues.

That difference is equivalent to one shipment in 300 vs. one in 47 getting pulled for a security exam, said Jayson Ahern, assistant commissioner for field operations.

Bonner said some companies may not perceive their raw number of exams has declined, because the agency has quadrupled the percentage of inspections since the Sept. 11, 2001 terrorist attacks. "They may be getting the same number, but they could be getting six times more," he explained.

Bonner reiterated promises made last year that CBP plans to issue annual statements to each company quantifying, as much as possible, their C-TPAT benefits and how much money they saved by being in the program.

Import managers will be able to take the statement to their CEO and show how security investments translate into the bottom line in terms of predictability, Bonner said.

He said his vision to make C-TPAT fully effective is to make sure the government extends benefits beyond CBP, and that other agencies use the same risk-management principles in determining cargo holds.

"It's important to have one government partnership with the trade so we can also rationalize the benefits at the border so cargo is not inappropriately held up" by other agencies, he said.

CBP officials said they are willing to offer more potential benefits because they also plan to ratchet up security criteria for C-TPAT and demand more commercial data further in advance. Part of that effort includes a stepped up validation process.

Michael Mullen, director of trade relations, speculated that the agency might be willing to offer benefits in the trade compliance area in exchange for following higher security criteria. "We are looking for really concrete benefits that can make up for costs that are going to come," he said.

Ultra-low-risk companies perhaps warrant fewer audits or the ability to have penalties mitigated, Mullen said in an interview.

After companies apply for C-TPAT membership, CBP reviews their security profile and action plan and certifies those that meet C-TPAT guidelines. Companies are also vetted through a database search to make sure they don't have any criminal violations or other compliance issues. The last step is for CBP to validate companies through on-site visits to make sure their foreign manufacturing or distribution facilities are following through with the importer's security plan.

CBP expects importers to make sure security assurance standards are met in the same way suppliers are required to meet quality assurance standards, Bonner said. "While you are worried about how many stitches are in a garment, why don't you make sure the security criteria are met?" he said, referring to corporate quality control visits.

CBP is under pressure from Congress to show that C-TPAT has some teeth and Bonner asserted that companies that don't comply are being decertified.

Ed Moriarty, a C-TPAT program manager, said CBP initially denies about 20 percent of security profiles, up from 12 percent at the start of the program, and sends them back to the companies to fix and resubmit. That covers about 1,000 of the 5,500 security profiles reviewed so far.

Some motor carriers have had their security profiles bumped back to them two, three or four times, Moriarty said.

About 10 percent of the 4,400 companies that have been certified have undergone validations. Nine companies have failed their validations, Moriarty said. Most of those companies have been kicked out of the program and a couple are on probation with no benefits pending security improvements.

Moriarty also said about 50 trucking companies who had joined C-TPAT to belong to an expedited pre-clearance program at land borders had their benefits turned off because of drug seizures and other unidentified supply chain security incidents.

CBP plans to reduce the backlog of validations, Bonner said. The agency has 40 supply chain specialists and has funding for another 120 to evaluate C-TPAT companies. Moriarty said the agency has 60 days to review applications and has improved its turnaround time to 22 days.

CBP officials said they want to open up C-TPAT to foreign manufacturers beyond those currently eligible in Mexico. Forty percent of imports by value enter the country through companies that participate in C-TPAT and Bonner said his goal is to get that number up to 60 percent within a year.

The agency is looking at various avenues to open up enrollment to foreign manufacturers, including partnering with an industry association to invite their 100 largest suppliers into the program, Moriarty said. Another option is to go through the World Customs Organization. Customs administrations could set up similar C-TPAT programs based on a WCO framework and the United States would recognize foreign manufacturers certified through that program, he said.

Bonner said he anticipated enrolling C-TPAT partners in Canada "relatively soon." Moriarty added that many Canadian companies belong to C-TPAT because they also have status as U.S. importers. ■

Christopher Gillis

BROKERS, FORWARDS & NVOs

Blust demonstrates resolve

U.S. Federal Maritime Commission Chairman Steven Blust should be commended for pushing forward a rulemaking that allows non-vessel-operating common carriers to enter confidential service arrangements with shippers.

The chairman moved the commission to vote on the rulemaking despite concerns raised by Commissioners Harold J. Creel Jr. and Joseph Brennan about the role of shippers' associations and service arrangements.

Blust could have halted the rulemaking for further review, but decided to move ahead with it. He noted the NVO industry's resourcefulness in making service arrangements work. Blust also noted the rulemaking might need some tweaking in the future, which further points out the 1998 Ocean Shipping Reform Act remains open to change, when necessary. The FMC has this authority under section 16 of OSRA.

It's also part of the FMC's fundamental mission under OSRA to create a "nondiscriminatory regulatory process for the common carriage of goods" with "a minimum of government intervention and regulatory costs."

While it helped to have the World Shipping Council's approval to proceed with the rulemaking, Blust exercised good business judgment, which is reflective of his 30 years as an executive in the ocean shipping industry. Blust became head of the commission in August 2002. He previously served as president and chief executive officer of Tampa Bay International Terminals in Florida.

By acting the issue, Blust probably saved his agency from pressure on Capitol Hill. Politically powerful players behind the initial petitions and supportive comments, namely UPS and FedEx Trade Networks, could have pursued relief from Congress with consequences unknown for the FMC.

This rulemaking doesn't mean that the FMC has weakened its ability to take down unscrupulous NVOs. In fact, the agency has probably sharpened its enforcement capability. NVOs are still required to be licensed and bonded with the agency, and operators that enter service arrangements share the same regulatory responsibilities as liner carriers when it comes to service contract management.

The FMC is expected to deal with the handful of individual NVO service arrangement-related petitions filed more than a year ago with the agency. However, these petitions have been largely muted by the recent NVO service arrangements rulemaking.

The National Customs Brokers and Forwarders Association of America and the Justice Department expect the FMC to pursue eliminating NVO tariff publication. While the NCBFAA does not oppose NVO service arrangements, the organization doesn't believe the petitions went far enough. Tariff publication is viewed by most NVOs as a costly exercise that offers no value to today's shippers. The NCBFAA is also skeptical about the prominence that NVO service arrangements will have in the ocean freight market.

Yet, it appears that Blust and the rest of the commission still have some concerns about the NCBFAA's petition.

"Either eliminating the tariff publication requirement completely and/or eliminating the condition of the exemption that all NSAs be filed with the commission and their essential terms be published could substantially impact the competition between large NVOCCs and VOCCs (vessel-operating common carriers) (who continue to be required to publish their tariffs, file service contracts and publish service contract essential terms) by continuing to impose costs on one while relieving costs for the other," the FMC's NVO service arrangement rulemaking said. "We anticipate NVOCCs who offer NSAs may wish to use their tariffs in much the same way as VOCCs do for service contracts, as a convenient place to house generally applicable provisions."

Blust should continue to take bold steps to eliminate outdated regulatory requirements.

Creel stays on at FMC

Harold J. Creel Jr. has entered his third term as commissioner of the U.S. Federal Maritime Commission, bringing ongoing stability to the five-person commission.

President Bush nominated Creel for the third term Nov. 16 and the Senate confirmed his appointment Nov. 20. Creel served as FMC chairman from February 1996 to August 2002. His new term expires on June 30, 2009.

Prior to his FMC appointments, Creel was senior counsel to the Senate Commerce, Science and Transportation Committee's Maritime Subcommittee. He held this position from October 1989 to October 1994. Earlier, Creel was an attorney with the Commerce Department's National Oceanic and Atmospheric Administration.

FMC drops Apparel Logistics petition

The U.S. Federal Maritime Commission rejected a petition filed by Crowley Logistics and its subsidiary Apparel Transportation last year requesting the agency pull the ocean transportation intermediary license of Apparel Logistics and investigate the company's "character" and intent in the market.

The petition alleged that Miami-based Apparel Logistics was "secretly incorporated" by former Apparel Transportation executive Manuel Lescano five days before Crowley Logistics bought Apparel Transportation on June 25, 2003.

Apparel Logistics rebuffed Crowley Logistics' petition as an attempt to "thwart competition" in the marketplace, and asked the FMC to dismiss the petition.

The FMC said Crowley Logistics and Apparel Transportation "failed to develop any evidence to show that the commission's staff erred" in granting an OTI license to Apparel Logistics. "We find that an investigation is unwarranted, and therefore Crowley and Apparel Transportation's petition is denied," the agency said in a Dec. 23 order.

Menlo Worldwide Forwarding changes to UPS

UPS recently completed the takeover of Menlo Worldwide Forwarding Inc. from CNF, which was announced in early October.

The Atlanta-based express and logistics group said it would drop the name Menlo Worldwide Forwarding "soon" to offer its services under the UPS name. Menlo Worldwide Forwarding had operated as Emery Worldwide.

UPS paid CNF $150 million in cash and took on about $110 million in long-term debt for the Palo Alto-based forwarding and customs brokers.

"Menlo Worldwide Forwarding's capabilities complement UPS's ability to manage customers' shipments of any size, anywhere and in virtually any time frame," said Bob Stoffel, senior vice president of UPS's supply chain group. UPS said the acquisition strengthens its ability to expand global supply chain services, adding guaranteed U.S. and worldwide heavy airfreight services to its portfolio.

Menlo Worldwide Forwarding had 2003 revenues of $1.9 billion, generated from forwarding services for heavy air freight shipments, ocean services and international trade management.

NVO service arrangements begin

NSAs are available at start of new ocean-contracting season.

By Chris Gillis

The door is open for U.S. non-vessel-operating common carriers to offer shippers confidential service arrangements.

The Federal Maritime Commission, which implemented the change to its regulations Jan. 19, allows NVOs for the first time to engage in similar contracting practices to those already used for the past five years by vessel-operating common carriers.

"The rulemaking will provide shippers with a broader range of service options, and greater opportunities for integrated supply chains," said FMC Chairman Steven Blust. He added that he's "confident" the use of NVO service arrangements (NSAs) will "ultimately lead to greater competition and a more efficient shipping industry."

Blust

The agency proposed its NSA rulemaking Oct. 27, after more than a year of intense petitioning and follow-up comments filed by several large NVOs and two trade groups. The World Shipping Council's approval of the NSA concept also provided the impetus for the FMC to act.

UPS, a rapidly expanding player in the ocean shipping industry, launched the first petition in the summer of 2003 calling for NVOs to have the same contracting privileges as the liner carriers under the 1998 Ocean Shipping Reform Act. Other NVOs filed similar petitions with the FMC.

On Aug. 2, 2004, the National Industrial Transportation League, Transportation Intermediaries Association and NVOs UPS, FedEx Trade Network, BAX Global, BDP International and C.H. Robinson Worldwide filed a joint submission urging the FMC to implement the reforms without further deliberations. Otherwise, the powerful lobbying arms of UPS and FedEx were prepared to take the fight to Congress.

At a Dec. 14 meeting in Washington, the FMC commissioners voted 4-1 to move forward with implementing the NSA rule.

Peter Gatti, executive vice president of the NIT League, said the commission acted appropriately by not slowing down the implementation of the NSAs.

Joseph Saggese
executive managing director, North Atlantic Alliance Association

"Prohibiting an NVOCC shippers' association from entering into an NSA with an NVOCC acting as a carrier appears to be counterproductive to recent developments and the noted importance of NVOCCs in today's ocean shipping environment."

"This is good for our customers, good for the industry and good for competition," said David Bolger, a UPS spokesman. "We will be ready once the final rule is implemented."

NVOs can begin to take advantage of the new NSA rule just in time for the 2005 eastbound transpacific shipping season. NVOs must first register with the FMC before filing the service arrangements. By mid-December, the FMC had received 27 NVO applications to electronically file service arrangements, and reported that more applications from the industry are on their way.

NVOs must also publish essential terms of their service arrangements in a public tariff format. Essential terms would not identify the shipper or the rates and charges.

However, not everyone in the commission or the ocean shipping industry is satisfied with the final NSA rule.

At the Dec. 14 agency meeting, two of the commissioners cited ongoing concerns about the rule's exclusion of shippers' associations with NVOCC members from entering service arrangements. FMC Commissioner Joseph Brennan even voted not to proceed with the rulemaking until these concerns could be resolved.

The rulemaking "doesn't go far enough," Brennan said. "Why not give (shippers' associations) a chance?"

Brennan

FMC Commissioner Harold J. Creel Jr. said he's worried that the rules could relegate shippers' associations to "second class" in terms of competition in the ocean shipping industry. He did not oppose going forward with the rulemaking.

Creel

The Washington-based American Institute for Shippers' Associations (AISA) challenged the FMC's proposed NSA rulemaking in recent comments, stating that the agency lacks statutory authority to adopt a restriction against shippers' associations based on the identity of their members.

The FMC said its final rule would permit shippers' associations with only shipper members to enter NSAs with NVOs but not those with NVO members.

AISA said it might consider an appeal of the FMC's vote to restrict the right of shippers' associations with NVO members to enter into confidential NVO service arrangements.

"Any decision to appeal and challenge the FMC's actions will be dependent upon AISA's analysis of the commission's final written decision," said Ronald N. Cobert, AISA's general counsel in a statement. "However, based on the commission's notice of proposed rulemaking, the restrictions that the commission has proposed appear to be unlawful and subject to judicial challenge.

"AISA will examine all available options, including judicial challenge, once it has seen the scope of the commission's written decision," Cobert said.

The FMC's final rule also precludes pure freight consolidators from entering NSAs with other NVOs, citing potential antitrust violations.

Joseph Saggese, executive managing director of the North Atlantic Alliance Association, a U.S.-based shippers' association with about 40 NVO members, said in comments filed to the FMC that the NSA rule would not "immunize NVOCCs behavior from the antitrust laws."

He said an NVO that enters an NSA for

Summary of new FMC NVO service arrangement requirements

The recently approved Federal Maritime Commission NVO service arrangement (NSA) regulations permit non-vessel-operating common carriers and shippers to enter into confidential ocean transportation agreements. The NSA rules require authorized NVOs to file a true and complete copy with the FMC of every NSA (or amendment) before any cargo moves pursuant to that NSA or amendment.

Failure to comply with the FMC's NSA requirement may result in the application of general tariff terms and conditions to a shipment(s).

The following is an overview of the required terms for NSAs. (It is not intended as legal advice and interested parties should consult with their legal counsel about specific regulatory requirements. The NSA rules may be found at 46 C.F.R. Part 531.)

Required NSA contents:

- Origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements.
- Destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements.
- Commodity or commodities.
- Minimum volume or portion (MQC).
- Service commitments.
- Line-haul rates.
- Liquidated damages for non-performance, if any.
- Duration, including effective date and expiration date.
- Legal names and business addresses of the NSA parties; legal names of affiliates entitled to access the NSA; names, titles, and addresses of representatives signing the NSA (in the case of an NSA entered into by a shippers' association); and the date upon which the NSA was signed.

Every NSA filed with the FMC must satisfy the following formatting requirements:

- A unique NSA number of more than one but less than 10 alphanumeric characters in length.
- A consecutively numbered amendment no more than three digits in length (with initial NSAs using "O").
- An indication of the method by which the statement of essential terms will be published.

The FMC requires NVOs make publicly available (at the same time of filing each NSA with the FMC) a concise statement of an NSA's essential terms in tariff format. This includes the following items:

- Port ranges.
- Origin and destination.
- Commodity or commodities involved.
- Minimum volume or portion (MQC).
- Service commitments.
- Duration.

The statement of an NSA's essential terms must be published as a separate part of the individual NVO's automated tariff system.

Source: Venable LLP

the purposes offering it to other NVOs should "likely not result in anticompetitive behavior." Saggese added: "Prohibiting an NVOCC shippers' association from entering into an NSA with an NVOCC acting as a carrier appears to be counterproductive to recent developments and the noted importance of NVOCCs in today's ocean shipping environment."

The North Atlantic Alliance Association's comments also noted that the Justice Department's "safe harbor" antitrust guidelines for conduct and operations of shippers' associations could be relevant to NVO shippers' association NSAs by providing:

- Adequate, well-established guidance to the trade.
- Protection to both shippers and carriers.

In addition, the association's comments stated that until the late 1980s it was standard procedure of most new shippers' associations to seek Justice Department clearance by way of a Business Review Letter (BRL) request. "As a practical compromise, we see no reason why the BRL could not be utilized in the setting of an NSA involving both an NVOCC as a carrier and an NVOCC shippers' association," Saggese said.

The commission said it would track the progress and impact of the NSA implementation in the industry.

"The door is not closed on this," said FMC Commissioner Paul Anderson. "We'll continue to monitor the situation."

The agency is watching the outcome of the case *United States vs. Gosselin World Wide Moving and The Pasha Group,* which is pending in the U.S. Court of Appeals for the Fourth Circuit. The case involves price fixing in the movement of military household goods from Europe to the United States. The companies admitted to wrongdoing but said they had antitrust immunity under the Shipping Act. The court's decision is due by the end of 2005 (For details about the case, read Shippers' Case Law, page 84).

While the FMC believes that only vessel-operating common carriers have antitrust immunity under the Shipping Act, some federal courts have ruled that NVOs are entitled to such immunity. The FMC is concerned that NVOs offering NSAs could be immune from both antitrust prosecution and FMC oversight.

Blust said the Gosselin case and other concerns from the shippers' associations should not hold up the NSA rule's implementation. "I think it's a creative industry, and they will take advantage of the opportunities," he added.

"NVOs are uniquely positioned to adopt and implement NSAs on a timely basis," said Ashley Craig, an attorney in Washington for law firm Venable LLP. "As shippers they've been dealing with vessel operators on contracts for years."

"The marketplace phenomena will definitely occur, regardless of how particular NVOs feel about NSAs," said Washington attorney Carlos Rodriguez in a memo to his NVO clients. "Someone's opportunity will be someone else's loss … It will be best to lead the parade rather than to sit on the sidelines watching it go by."

The FMC defines NVO service arrangements as: "A written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVO in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed period, and the NVO commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party."

Cargo moved under NSAs is also exempt from the tariff publication requirement of the Shipping Act.

Shippers are expected to tiptoe into the

Carlos Rodriguez
attorney, Rodriguez, O'Connell, Ross, Fuerst Gonzalez & Williams

"The marketplace phenomena will definitely occur, regardless of how particular NVOs feel about NSAs. Someone's opportunity will be someone else's loss ... It will be best to lead the parade rather than to sit on the sidelines watching it go by."

NSA arena, but are generally optimistic about the new service contracting option.

"Shippers are hopeful that this change will evolve into a higher level of aggregation in the NVO community, which should translate into much needed improvements in service and visibility," said a logistics executive for a company that ships about 100,000 TEUs globally a year. "This too would lead ultimately to a more competitive environment."

NVOs that petitioned the FMC for the ability to enter service arrangements are optimistic about the changes to their business.

"BAX is very pleased with the FMC's recent rulings," said Marie K. Connell, a BAX spokesperson. "Adoption of the NSA will provide increased pricing and commercial options to BAX — and our customers. We look forward to implementation of this new rule and using NSAs."

Information systems providers, such as Management Dynamics and GT Nexus, are initiating programs to help NVOs manage their service arrangements electronically.

Management Dynamics, for example, announced its NVO service arrangement module as a component of its Rate Explorer program. With Rate Explorer, the company said NVOs have two options upon acceptance of a rate quote: self-publish their rates to the tariffs or build a fully FMC-compliant confidential contract electronically with the shipper. The module also allows the NVO to electronically file their service arrangements to the FMC. ■

NACA targets imports

Expected increase in U.S. imports could complement predominantly export cargo base.

By Philip Damas

The big neutral non-vessel-operating common carrier NACA expects to increase cargo volumes this year and place a particular focus on the development of import container freight into the United States.

"Our company originally was mostly export-oriented," said Michael Sinclair, chief executive officer of NACA for the Americas, Europe and Africa. "We are going to push imports."

Carson, Calif.-based NACA Logistics, formerly known as the New American Consolidators Association, has set a budget target of 15-percent growth in U.S. container imports, Sinclair said.

"In respect to imports, we are starting from a much lower base; therefore, we expect a higher percentage increase," added Heather Clarke, spokeswoman for NACA.

NACA also expects to raise its less-than-containerload (LCL) and full containerload traffic in export trades from the United States this year, partly thanks to the weak U.S. dollar.

For 2005, NACA expects to handle around 143,000 TEUs of exports from the United States., making it a substantial NVO-based shipper in the outbound trades. It said its U.S. operations will increase export FCL volume 5 percent in 2005 to 72,492 TEUs. Freight All Kinds volume from the United States is projected to be 34,651 TEUs for 2005.

NACA comprises Brennan International Transport, Direct Container Line, Conterm Consolidation Services and Vanguard Logistics Services.

Currency Factors. NACA expects the decline of the dollar to stimulate export growth from the United States.

However, the NVOCC group added: "The flip side of a weak dollar is that it will slow imports from countries that do not have their currencies pegged to the U.S. dollar."

"Possibly, eventually, the U.S. dollar must slow down exports from Europe (to the U.S.)," Sinclair said.

But U.S. imports from countries such as China and Hong Kong, whose currencies are pegged to the dollar, should not see any slowdown, he added.

To support its international network, NACA will focus on the continued development of its import services to the United States.

"Even with the weak dollar, NACA USA is expecting its sales efforts to result in a 13.5 percent increase in LCL volume and 24.9 percent increase in FCL," Sinclair said.

In Asia, NACA said it plans to develop hubs in Singapore and Hong Kong, while it is reviewing the markets of Cambodia, Laos and Myanmar.

Sinclair expects the overall container shipping market to continue to grow in 2005.

The group's Vanguard Logistics Services subsidiary expects to increase LCL volume to Latin America 13.5 percent in 2005, reflecting the strength of the local economies and a continued increase in destination sales, NACA said. FCL traffic to Latin America is budgeted to increase 18 percent. Vanguard's LCL volume from Brazil to the United States is budgeted to grow 25.5 percent in 2005, while Vanguard Argentina's weekly service to New York is budgeted to increase volume by 34 percent.

NACA has offices in Asia, Australia, New Zealand, Europe, North and South America.

The NVO has a presence in the Asia/Australia, Asia/Europe and Australia/Europe trades, but described these activities as "not our principal business."

NACA subsidiary Brennan International Transport Singapore has appointed General Export, an Italian NVOCC, as its agent for Italy. NACA said Brennan's partnership with Genex will allow both sides to develop the eastbound and westbound trade lanes between Italy and Southeast Asia.

Management Change. In November, NACA revamped its management. It promoted Sinclair from chief operating officer to CEO for the Americas, Europe and Africa, and also appointed Mike Dye, formerly senior VP of global services, to become CEO for Asia.

Dye is stationed in Hong Kong.

Jeff Lee was appointed chief operating officer for the United States.

The group's former CEO and founder of Direct Container Line, Owen Glenn, is now chairman of NACA. ■

Tracking China's evolving market

Airlines, forwarders face rapid growth, peak-season volume swings, new entrants, changing regulations.

By Philip Damas

The U.S./China air cargo market is not only a booming market — it is also evolving through deregulation, the arrival of new competitors, and the partial lifting of textile quota on Chinese garment exports.

U.S. airlines anxiously await the U.S. Department of Transportation's imminent decision on the awards of new traffic rights for the U.S./China route.

"Clearly, China is the fastest growing transpacific market," said Jim Friedel, president of Northwest Airlines Cargo. "It's our number one priority." Northwest has received rights for another six all-cargo weekly frequencies to China in the latest DOT awards, and will seek more.

Friedel

In December, Polar Air Cargo, a subsidiary of freighter operator Atlas Air, commenced a U.S./China service to and from Shanghai. The operation serves Chicago, New York, Los Angeles and Miami in the United States as well as Santiago, Chile, and Viracopos, Brazil.

"Forecasts vary, but all consistently indicate double-digit growth over the next decade," said Alan A. Caminiti, spokesman for Atlas Air, commenting on the U.S./China market.

"For the year ending March 2004, year-over-year growth on the basis of volume/weight was 22.4 percent for air exports from the U.S. to China and 10.1 percent for imports from China," he noted.

Commerce Department data show U.S. exports to China of about 98,000 metric tons for the year ended March 2004 and imports from China of 533,000 tons for the same period.

According to Boeing's World Air Cargo Forecast 2003, China is projected to be the fastest growing air cargo market in the world over the next 20 years.

Gene Boyer, managing director of U-Freight America, a major air forwarder headquartered in Hong Kong, said his company regards China "as the future."

Boyer relates that whereas 45 percent of products made worldwide are now made in China, the made-in-China ratio is predicted to rise to 80 percent in the next few years.

Gene Boyer
managing director, U-Freight America

"We anticipate that there will be 111 additional flights per month from China to the U.S. in the next three years."

The growth in air freight volumes will be dominated by imports from China to the United States.

"Aside from perishables, there is very little cargo going westbound," Boyer said.

For this reason, many of the additional freighter flights on this route will follow a triangular routing, instead of moving westbound empty, according to Boyer.

Peak Season. Forwarders and shippers must watch that they have enough lift to move China/U.S. cargoes during the annual peak season.

"Normally, you demand outstripp supply at this time the year," said H Cutler, vice presic of global transpo tion of Menlo Wo wide.

Cutler

For the 2004 p season, Menlo Worldwide contracted with World Airways to operate a dedicated MD-11 freighter for the company between Shanghai and its hub in Dayton, Ohio.

"The freighter service was put in place to help with our peak season surge," Cutler explained. Because the service was operated on an ad hoc charter basis, it did not have to be approved under the U.S./China aviation agreement.

"We had a very manageable peak season," Cutler said. Despite its recent dedicated China/U.S. freighter initiative, Menlo said it prefers to buy capacity from commercial airlines, when available.

The problem for forwarders and for shippers, though, has been the lack of lift capacity during the busiest months. U-Freight had negotiated an allocation of 300 tons a month with airlines during the past peak season, but found its actual volumes exceeded this figure.

This situation was exacerbated by the diversion of transpacific cargoes from ocean transport to air. "A lot of the customers in Asia have been hesitant to put their cargo on water," Boyer explained, citing port delays on the U.S. West Coast.

During the 2005 peak season, shippers may again be "suspicious" about the reliability of maritime services, he added. "There is a distrust of the ports."

2004 saw a robust growth in Chinese air cargo volumes. "This is the strongest peak season we've seen," Boyer said. China including Hong Kong represents about 80 percent of U-Freight's Asian business volume.

Cutler said Menlo operated a second sector within its freighter service from Hong Kong to cover shipments from the Pearl River delta in southern China.

But the impact of the lifting of textile quota on U.S. imports from China is hard to predict. "We're playing it day by day," Cutler said.

New Capacity, Entrants. Forwarders welcome the opening of the market to new airline entrants and the proposed increase in the number of China/U.S. flights under the 2004 bilateral aviation agreement.

Last June, the United States and China negotiated a new air services agreement that will increase the number of airlines of each country allowed to operate in their bilateral market and will permit a nearly five-fold increase in weekly flights between the two countries over the next six years (August 2004 *American Shipper*, page 60).

New-entrant airlines, either passenger or cargo carriers, will be designated by the DOT in each of the years 2005, 2006, 2008 and 2010.

American Airlines, Delta, Continental and others have applied for the right to enter the potentially lucrative U.S./China market.

"All the U.S. carriers are asking for new routes," Boyer said. "All the Chinese carriers

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Three major Chinese carriers

(Figures compare first half 2004 with first half 2003)

	China Southern Airlines	Air China	China Eastern Airlines
Headquarters:	Guangzhou	Beijing	Shanghai
Cargo traffic (revenue ton-kilometers):	2.2 billion, up 54%	1.2 billion, up 21%	2 billion, up 68%
of which, international	28.0%	77.0%	51.8%
of which, domestic	69.4%	20.7%	39.0%
of which, Hong Kong regional	2.6%	2.3%	9.1%
Cargo revenue:	RMB1.1 billion ($124 million)	RMB2.4 billion ($285 million)	RMB2 billion ($236 million)
increase over first half 2003	15%	34%	40%
Passenger revenue:	RMB9.8 billion ($1.2 billion)	RMB11.5 billion ($1.4 billion)	RMB6.8 billion ($626 million)
increase over first half 2003	74%	80%	85%
Fleet (as of June 30):	139 aircraft	136 aircraft	100 aircraft

Source: Airlines' financial statements.

will now have opportunities."

"We anticipate that there will be 111 additional flights per month from China to the U.S. in the next three years," he added.

Northwest Airlines, United Airlines, Federal Express and UPS are the four American airlines that have operated in the U.S./China market for years, and they face new competition.

The first is freighter operator Polar Air, which has just joined the club of airlines possessing traffic rights on this route.

But the traditional operators are not remaining idle.

In October, Northwest started a three-flights-a-week freighter service between its cargo hub at Anchorage and Shanghai. In about April, it plans to add another three weekly all-cargo frequencies between Anchorage and Shanghai, before eventually providing eight weekly freighter flights on this route later this year.

Friedel said Northwest Airlines Cargo will add two 747 freighters to its fleet of 12 to serve China.

While Northwest has initially concentrated its freighter operations in Shanghai, like several other carriers, it said it would look at southern China more closely in the future.

"We have made an application to the DOT for more frequency rights for the 2006 'bucket of frequencies,'" Friedel explained. If granted, it will allow the operator to fly to Guangzhou and Xiamen, in addition to Shanghai.

In October, Northwest Airlines started a daily passenger service with belly hold capacity focused on Guangzhou. This service operates three times a week between Northwest's hub at Tokyo-Narita and Guangzhou, a new destination for the airline.

Deregulation, Competition. The Chinese authorities are deregulating what has until now been a very tightly controlled market dominated by state-owned airlines.

Xianping Wang, consultant with GCW Consulting, told the recent Air Cargo Forum of the International Air Cargo Association (IATA) that many new airlines have been established in China, including private-sector airlines. The authorities of Shanghai are also pushing the development of Shanghai as a cargo hub and allowing more fifth cargo rights to non-Chinese airlines, he added.

"China has shown remarkable leadership in liberalization," Giovanni Bisignani, IATA's director general, told a press conference in Geneva Dec. 14.

China Eastern, one of the country's major airlines, said in a recent statement that progress in open skies agreements is accelerating. "The Chinese government plans to gradually liberalize access to Shanghai's aviation market in order to encourage and attract more foreign air carriers," the Chinese airline said. "The group can be anticipated to face stiff competition from Chinese and foreign carriers in its operations in eastern China, particularly in the Shanghai market."

Friedel, at Northwest Airlines Cargo, said Chinese airlines are still minor players in the transpacific freight market.

Each of the major Chinese airlines has frequencies to the United States.

China Southern, based in Guangzhou, operates a passenger service four times weekly between Los Angeles and Guanzghou. It also flies a 747-400 freighter between Shanghai/Shenzhen and Chicago.

China Southern has also held talks with the SkyTeam Cargo alliance, one of the major airline alliances, about joining it.

In October, Germany's Lufthansa Cargo and Chinese carrier Shenzhen Airlines formed a joint venture based at the Chinese hub of Shenzhen, the fourth-largest airport in China. Called "Jade Cargo International," the new joint venture airline is scheduled to start operating in February.

A spokesman for Lufthansa Cargo said joint ventures in China have to be structured so that Chinese partners own a majority of the venture, as is the case with Jade Cargo International.

Lufthansa Cargo also has two ground-handling joint ventures in Shanghai and Shenzhen with Chinese partners.

Air China acknowledged in a recent prospectus to the Hong Kong stock market that the deregulation of China's airline industry "may result in more competition."

"Beginning in the summer of 2005, all Chinese airlines will be permitted to operate domestic flights originating from and/or stopping over in Shanghai," it said.

"According to the new air services agreement between China and the United States, effective January 1, 2007, qualified air cargo carriers of one country will be allowed to establish cargo hubs in the other country," it added.

Meanwhile, UPS said in December that it will acquire part of the express service network in China of its partner Sinotrans for $100 million.

The takeover will allow the American express operator to take direct control of its international express operations in China's largest and most important cities by the end of 2005. Operations will be transferred to UPS in 23 cities across China. Starting in January, UPS will take direct control of operations in Shanghai, Guangzhou, Shenzhen, Tianjin and Qingdao. By December 2005, UPS will assume control over its express operations in 18 additional locations and have a total of 1,700 employees.

UPS said operations in those 23 business centers expand service to an additional 200 cities, which account for more than 80 percent of China's gross domestic product. UPS and Sinotrans will continue to work together in areas not covered under the agreement.

The transaction was announced as UPS ramps up its U.S./China airline operations after having obtained additional flying rights. In November, UPSA began the first of 12 new flight to China with MD-11 service to Shanghai. The new flights triple the company's earlier service from six to 18 flights a week.

UPS also plans to begin next year a nonstop service between the United States and Guangzhou.

The integrator's export volume in china grew 129 percent in the third quarter of 2004 over the year-earlier period, and by more than 90 percent through the first nine months of 2004.

While China is gradually opening its airline market, it is also restructuring its previously fragmented domestic airline industry to allow it to be more competitive internationally.

Since 2002, the Chinese government has encouraged industry consolidation and merged the nine major state-owned Chinese airlines into three major groups: Air China, China Eastern and China Southern.

"The goals of these efforts were to increase the three major Chinese airline groups' market share, create economies of scale and efficiency and better prepare them for international competition," Air China said in a prospectus to the Hong Kong stock exchange.

"The PRC government encouraged regional airlines, though not directly involved in the consolidation plan, to join the three major Chinese airline groups," Air China added.

Meanwhile, the Chinese government has also engineered the listing of the three major Chinese airlines on international stock markets, thereby opening their capital to private investors.

China Southern and China Eastern had separate initial public offerings on the New York Stock Exchange in 1997.

In December, the initial public offering on the Hong Kong stock exchange of Air China, the biggest Chinese airline, was oversubscribed 82 times, as investors sought to capitalize on the expected growth of China's airline business.

Air China said investors applied for a total of 23 billion Hong Kong offer shares, when it had offered to sell 281 million. Hong Kong-based Cathay Pacific has reportedly bought a stake in Air China.

Air China has arranged a dual IPO on the Hong Kong and London stock exchanges.

"The offer shares initially offered under the international offering have been very significantly oversubscribed," the Chinese airline said.

The offer price has been set at HK$2.98 per share, at the higher end of the proposed range of HK$2.35-$3.10, according to wire services. The IPO raised about $1.1 billion.

Air China is the biggest and last major Chinese airline to join the stock market, following its rivals China Southern and China Eastern.

But the Chinese airlines are still largely orientated towards their domestic markets rather than towards international markets (see chart).

According to IATA, Air China was the world's 28th-largest international cargo carrier in 2003, with 3 billion ton-kilometers flown. China Eastern was ranked 46th, with 1.5 billion ton-kilometers, and China Southern was outside the top 50 international cargo airlines. By contrast, when measured in ton-kilometers of domestic freight, all three major Chinese airlines belonged to the world's 20 largest airlines.

Sidler

In September, Bruno Sidler, president and chief executive officer of Panalpina, warned that international forwarders and airlines should not ignore the expected impact of new Chinese airlines in the marketplace.

"The Chinese carriers are yet to make an impact," the forwarder executive told the recent Air Cargo Forum in Bilbao.

"Chinese carriers are making huge investments in capacity — they will come into the market as low-cost carriers," Sidler predicted. ■

Eric Kulisch

A380 takes airplane competition to next level

Airbus is ready to break Boeing's 30-year monopoly making large passenger aircraft.

The European aircraft manufacturing consortium unveiled its super jumbo, long-range passenger plane at a mid-January ceremony attended by dignitaries from Great Britain, France, Germany and Spain.

Airbus plans to begin certification test flights at the end of March and deliver its first double-decker A380 in 2006. It has orders for 149 planes so far.

The colossus of the sky will carry 550 people, or more in some versions. That also means more cargo space for air freight forwarders and their customers.

For those who want all the cargo space they can get, there is the all-cargo A380 variant.

UPS placed an order in January with European aircraft manufacturer Airbus for 10 A380 super jumbo, long-range freighters as part of the parcel delivery giant's effort to keep up with demand for international shipping.

"The A380 will allow UPS to effectively meet the fast-growing demands of our customers across a variety of global trade lanes," said John Beystehner, chief operating officer and president of UPS Airlines, in a statement.

Deliveries are scheduled to begin in 2009 and continue through 2012. UPS has the option to purchase 10 more of the super jumbo jets. The purchase price was not disclosed.

The order matches one by rival FedEx in 2001. FedEx is one of the original launch customers for the A380, and will begin taking deliveries in 2008.

The A380 freighter version has three cargo decks, compared to two in the Boeing 747-400 freighter, with 40,000 cubic feet of capacity and a maximum payload of 150 tons. It can accommodate 71 large cargo pallets. The standard Boeing 747-400 freighter can carry 124 tons and has a range of 2,600 miles. The A380 has nearly twice the payload of the MD-11, another long-range aircraft that's part of both the UPS and FedEx fleets. It has a range of 5,600 nautical miles, enabling it to fly more non-stop legs than other aircraft.

The extra capacity means FedEx and UPS can handle more cargo with fewer flights, an important factor in China where U.S. airlines have a limited number of weekly slots.

UPS's international business grew 13.2 percent in the third quarter compared to the same 2003 period. Asia export volume increased 29 percent and export volume from China more than doubled.

UPS's decision is a blow to Boeing, which has lost market share and the overall lead in worldwide deliveries of commercial airliners to Airbus in recent years. UPS operates nine 747-100s and four 747-200s.

The competition between Boeing and Airbus is as fierce as ever. 2003 marked the first time that Airbus passed Boeing in total airplane deliveries last year for the first time — 305 to 281. Last year Boeing delivered 285 commercial airplanes, but Airbus bested it again with 320 deliveries. The fact that Boeing cannot take advantage of the weaker U.S. dollar to spur more export sales indicates the challenge it faces.

The European Union and the United States recently agreed to settle their dispute over state subsidies for aircraft makers Airbus and Boeing through direct negotiations rather than pursue actions through the World Trade Organization.

Both sides pulled their requests for WTO arbitration in December and now begin three months of talks to end commercial aircraft subsidies. They both also agreed to suspend new subsidies during the negotiation period.

"For the first time in this longstanding dispute, the U.S. and the EU have agreed that the goal should be to end subsidies. To sharpen the focus of our work, we have further agreed to use the definitions and framework of the WTO subsidies rules as the basis for an agreement. This approach should also help us multilateralize the effort over time," U.S. Trade Representative Robert Zoellick, said in a statement.

After a bilateral fair-trade agreement is reached, the two sides will work to get other countries with civil aircraft industries, including major suppliers to Airbus and Boeing, to adopt it, according to the U.S. Trade Representative.

The dispute escalated last year after the United States terminated a decade-old agreement permitting limited subsidies to commercial aircraft producers expired. The United States argued that the EU was not phasing out state aid as the agreement required. The United States filed a complaint against the EU over state aid to Airbus and the EU retaliated with an action for U.S. support of Boeing.

For logistics providers, the Airbus-Boeing competition bears watching on several fronts. It's an air cargo story with implications for capacity, especially in the tight Asia/U.S. lane. And it's a trade dispute that has the potential to escalate and lead to retaliation in other economic sectors.

Of particular note is the two companies have completely opposite strategies for meeting the huge projected growth in demand for aircraft during the next 20 years. Both strategies seem to have logic behind them.

Airbus is betting that airlines will prefer the efficiency of moving large numbers of people over long distances. With airports and air space already congested it makes sense is to use fewer planes to haul more passengers and cargo.

The Airbus A380 is a phenomenal engineering project, but will it pay off? Company officials recently disclosed that the $13 billion project is already over budget by $2 billion, primarily due to research and development designed to improve the efficiency and weight of the aircraft. But they insist the program will still be profitable, projecting a 20 percent rate of return. The company says it needs 100 more orders to break even.

Boeing takes the view that people prefer more convenient, point-to-point service rather than connecting through hub airports. With more competition among airlines and countries loosening restrictions on the number of foreign carriers and flights that can serve their markets, the Chicago-based manufacturer is gambling that the time is right for a fuel efficient, mid-size plane that can fly non-stop almost anywhere in the world, and is developing the 250-seat 7E7 Dreamliner to meet that demand. Boeing executives say history shows that Airbus has the wrong formula. The Boeing 767 and 777 became more popular and stole market share away from the 747 even though they were more efficient to operate. Boeing has received 56 orders for the 7E7, less than the 200 it had projected so far.

Both sides seem to be covering their bets, just in case. Airbus recently said it would develop the A350 as a direct competitor to the 7E7 — and, apparently plans to apply for European government loans to develop the plane. Boeing, which hasn't sold a 747-400 jumbo jet since 2002, is considering whether to offer a "stretched" version of the 747 that could carry 450 passengers, up from 416, and use 7E7-type engines to extend its range.

It will be interesting to see who is right.

FedEx's Smith urges cargo access

Integrator chairman seeks end to protections for domestic U.S., Europe cargo markets.

PARIS

Frederick Smith, chairman and president of global express company FedEx, urged European leaders to lift protections on domestic air cargo markets as an interim step towards a comprehensive open aviation market with the United States.

In a wide-ranging speech to European policymakers and journalists in Paris Jan. 17, Smith said he favors full access for European express carriers in the United States in exchange for allowing U.S. companies to operate freely in the European Union.

He singled out the United Kingdom for slowing U.S.-EU negotiations by holding out for a complete aviation agreement instead of first phasing in a less controversial treaty for all-cargo airlines while continuing work on liberalizing passenger markets.

"FedEx would support a completely unrestricted transatlantic all-cargo aviation agreement, including reciprocal access to U.S. markets. To accomplish this, we believe the best approach is to allow airlines on each side of the Atlantic to wholly own airlines in the others' territories. U.S. all-cargo carriers should be able to own 100 percent of a European carrier, and European all-cargo carriers should be able to do the same in the United States," Smith said, according to a text of his prepared speech.

FedEx and UPS have long pushed for greater freedom to set up subsidiaries, ground operations and more air routes in Europe. The two logistics giants are on record supporting international open skies and liberalized traffic rights and foreign investment rules. The United States has open-skies agreements with many European countries, but the lack of an agreement with the United Kingdom means FedEx cannot provide direct air delivery from third countries — only from the United States.

Smith's comments suggest a realization that no more is to be gained by trying to keep European delivery company DHL out of the U.S. domestic market. FedEx and UPS have challenged DHL's right to operate a U.S. airline under U.S. citizenship laws, but regulators have repeatedly ruled that DHL Airways and its successor, Astar Air Cargo, are owned and controlled by Americans. DHL bought Airborne Express in 2003 and is rapidly building its U.S. ground network to challenge FedEx and UPS.

Smith said granting full international rights would align U.S. and EU standards much faster than trying to harmonize regulations one by one.

FedEx is gearing up to facilitate the growth in European trade by adding more capacity, Smith added. The FedEx founder said adding the Airbus A380 super jumbo jet to its freighter fleet will provide FedEx big efficiency gains.

The A380 is under development and expected to make its commercial debut in 2006. FedEx is the original launch customer for the A380 freighter variant, with the first of 10 planes scheduled for delivery in 2008.

UPS said Jan. 10 it also placed an initial order for 10 A380s. Deliveries are scheduled to begin in 2009 and continue through 2012. UPS has an option to purchase 10 more of the jets. The original purchase price was not disclosed.

"The A380 provides significantly lower direct operating costs than the largest aircraft flying today. Without the A380, FedEx would need many more intercontinental flights to handle the same volume. The aircraft will certainly give us greater network capacity between Europe and Asia," Smith said.

FedEx will increase its transatlantic capacity more immediately by introducing in March five weekly directly flights from Cologne, Germany, to the main FedEx hub in Memphis, Smith said.

The 20 percent increase in westbound capacity will provide extra next-day service and later pick up times of up to three hours for shippers in Germany, Belgium and the Netherlands.

Smith also called for reform of customs and other regulatory rules, such as restrictions on night flights at some airports that impede overnight delivery services. Customs clearance procedures account for as much as 25 percent of delivery costs.

"Progress has certainly been made on the customs clearance front, but there is much more work to be done if we are to become a truly fast-cycle economy. This is an issue all world trading partners must address promptly to keep goods flowing across borders rather than queued up on the dock or runway," he said. ■

Philip Damas

Chinese shipping transformation

China's maritime, shipbuilding and port sectors continue to show a remarkable ability to absorb technical know-how, financial investment and other business skills imported from other countries.

China already has low costs, an eager workforce and a long maritime tradition. If it adds western technology, capital and financial practices, this will make the Chinese shipping sector a very strong competitor against international rivals.

Consider COSCO. Government-owned COSCO Container Lines is planning to emulate fellow Chinese carrier China Shipping Container Lines with its own initial public offering in the first half of the year, according to Hong Kong media. Remember that, until recently, it wasn't clear whether Chinese carrier officials, trained in central state control, were familiar with profit and loss accounts.

The COSCO group has used international businessmen and politicians as advisers.

The Chinese group already has several publicly listed affiliates on the Hong Kong and Singapore stock exchanges, notably its Hong Kong-listed port and leasing arm, COSCO Pacific.

COSCO Container Lines, China's largest container carrier, is expected to raise HK$15.6 billion ($2 billion) to HK$23.4 billion ($3 billion) from an initial stock offering in Hong Kong.

In the shipbuilding sector, China's Hudong-Zhonghua shipyard has signed a contract with China Shipping Container Lines to build four 8,530-TEU containerships. Due to be delivered in 2007 and 2008, they will be the largest boxships built by a Chinese shipyard. This development is bad news for South Korea-based shipbuilders.

In the container port sector, according to shipping lines, Chinese terminals have a record of continually improving their shipside container handling productivity. Their productivity rates already exceed those of many European and North American ports.

You could argue that it is now the turn of U.S. and European ports to learn from Chinese ports, as far as their ability to attract investment capital and cope with increasing volumes is concerned.

Meanwhile, Shanghai International Port (Group) Co. Ltd., an arm of the local government which overseas the port of Shanghai, is transforming itself into a joint stock limited company and opening its capital. Shanghai International Port (Group) will sell RMB5.6 billion ($677 million) worth of new shares to the Chinese state-owned shipping and port operator China Merchants Holding in a bid to raise capital.

China Merchants is an experienced port operator and investor that owns Hong Kong-based Modern Terminals Ltd., among others.

This financial restructuring of the port of Shanghai coincides with its plan to develop a giant port container complex at Yangshan, near Shanghai.

Shanghai International Port (Group) has also signed joint venture agreements concerning new terminals at the existing port with non-Chinese operators like Hutchison Port Holdings.

And the private-sector Hutchison group, based in Hong Kong, bought a large shareholding in China Shipping Container Lines during the shipping line's IPO last year.

So far, the areas where few innovations seem to be coming from China are information technology and techniques like yield management and operational research. COSCO recently said its subsidiary COSCONET is building an intranet system in Beijing for the China Classification Society. But COSCO Container Lines had to go to Hong Kong-based OOCL to purchase a good IT system, in an apparent attempt to catch up.

It will be interesting to see if Chinese businesses, when they have become public corporations, also improve the disclosure of their operations and results, and open up more to the media.

More Chinese concentration

Citigroup Smith Barney predicts the port of Shanghai will handle 27.3 million TEUs in 2008, with the port of Shenzhen in southern China moving 25.7 million TEUs in the same year.

The current meteoric growth rates of Chinese cargo volumes surely cannot be maintained forever. But China seems certain to see Shanghai become the world's largest container port within years.

Meanwhile, Maersk Container Industri, a subsidiary of the A.P. Moller-Maersk group, has acquired a container manufacturing plant in Dongguan, southern China. The factory will be modernized and expanded this year and production is scheduled to start in 2006.

Maersk already manufactures reefer containers in Tinglev, Denmark, and in Qingdao, China.

Besides producing a big share of the world's consumer goods, China also manufactures most of the ocean containers used to ship the country's exports to overseas markets.

A year of volume records

2004 was good for volumes in all areas of transportation.

Intermodal volume on U.S. railroads topped 10 million trailers and containers in a single year for the first time, according to the Association of American Railroads.

Intermodal traffic for the year reached 10.99 million trailers and containers, up 10 percent from 2003, when the previous annual record of 9.94 million units was set.

Figures cited by Hapag-Lloyd show worldwide maritime container traffic rose 9 percent to about 72 million TEUs in 2004.

Growth in the Asian container trades was much faster.

The Asia-to-U.S. box traffic was expected to top 10 million TEUs for the first time in 2004, when volume increased an estimated 13-15 percent to 10.4 million-10.6 million TEUs. Final figures have not been published yet.

The port of Long Beach handled more containers in the first 11 months of 2004 — 5.2 million TEUs — than during the whole of 2003, when 4.7 million TEUs crossed its docks. This also marked a new record.

Through the first 11 months of 2004, shipping terminals at the Californian port saw a 23-percent increase in total traffic over the same period a year earlier. Container imports were up 24 percent, exports up 11 percent, and empties up 29.5 percent.

In November alone, the port handed a record 582,614 TEUs, 37 percent more than a year earlier and a new monthly volume record.

Another record that many would like to forget, though, is that congestion delays in Long Beach and Los Angeles during the 2004 peak season were the worst in 10 years.

Adrion's steady hand at Hapag-Lloyd

German container line's network expansion, productivity and electronic commerce push continue.

By Philip Damas

Adolf Adrion, chief executive officer of Hapag-Lloyd Container Line since March 2004, does not regard himself as a revolutionary.

The policies of Gunther Casjens, his predecessor, were working and he has maintained them, he said.

"As far as strategy was concerned, there was no need to change anything," Adrion told *American Shipper*. This continuity has seen the German shipping line enter more liner trades, expand faster than the market as a whole, and further raise its productivity.

But Adrion suggested his management style might differ from that of Casjens.

"Maybe my style is a little bit different," Adrion said. "Maybe I am a little bit more democratic."

Until Adrion was promoted to take charge of Hapag-Lloyd Container Line, he was one of six managing directors at the shipping line. "We certainly worked together," he said. "Then all of a sudden, I am one (rank) higher … then I can't change my attitude."

Adrion has worked for Hapag-Lloyd for many years and needed no introduction to the top job. In addition to being responsible for Hapag-Lloyd's container shipping activities, Adrion is a member of the executive board of Hapag-Lloyd AG, the parent company of Hapag-Lloyd Container Line.

He has also been chairman of the Far Eastern Freight Conference of Asia/Europe carriers since 2003.

Growth At Less Cost. For years, Hapag-Lloyd Container Line has increased its container volumes without raising staff levels.

Adrion said this efficiency drive continued in 2004. "We carried 15 percent more volume than in 2003, and we did not increase our staff except for (crews of) two vessels," he said.

This meant productivity gains of 10 to 15 percent in 2004, on top of previous gains recorded in earlier years

At the end of 2003, Hapag-Lloyd Container Line employed about 3,500 staff, about the same as in 1995. But its traffic volume over the same period grew from about 900,000 TEUs in 1995 to 2.1 million TEUs in 2003

The German carrier has also grown faster than the market, recording an average compound growth rate of 12 percent a year in the past six years (see chart).

To raise productivity, information technology programs and direct electronic transactions have replaced routine tasks previously carried out manually.

"You cannot always ask people to work longer or harder," Adrion said. Productivity gains must be obtained mainly through better systems, he added.

"We are getting more and more electronic connections to customers," he said. This is done by electronic data interchange (EDI) and via the multicarrier portal Inttra. Shippers can send both bookings and shipping instructions to Inttra carriers via the neutral portal.

"The customers go directly into our system," Adrion added.

Adrion reported that 25 percent of the company's bookings and shipping instructions are now handled by electronic means. Electronic links between customers and Hapag-Lloyd are "ever increasing," he said.

Adolf Adrion
chief executive officer, Hapag-Lloyd Container Line

Limited Transfers Offshore. Adrion brushed off any suggestion that Hapag-Lloyd's service levels to shippers were sacrificed to productivity initiatives.

"The customer service levels have not suffered," he insisted. Hapag-Lloyd is known as "a high quality carrier."

Contrary to several major carriers, Hapag-Lloyd has not outsourced its U.S. and European customer service and documentation tasks to offshore locations. However, it has set up a documentation center for the Far East based in Shanghai.

American and European shippers have complained of a decline in customer service from ocean carriers due to their offshore centers. "Not with us," Adrion said. Hapag-Lloyd's center in Shanghai "works very well, but is only concentrating on (serving shippers located in) the Far East."

"In America, we do the documentation, customer service, bookings and so on," he added.

The carrier's productivity gains have paid off. Hapag-Lloyd Container Line earned an operating income of 253 million euros

($316 million) on revenue of 2.2 billion euros ($2.75 billion) in 2003 — a margin of 11 percent of revenue. It has not yet disclosed its results for 2004.

As one of the most profitable carriers, Hapag-Lloyd has attributed its good results in recent years to its yield management system, practices aimed at avoiding empty moves, and IT efficiencies.

"We have one system covering everything from the booking to the bookkeeping, so the whole transport link is on one file," Adrion said.

Inttra Portal. Hapag-Lloyd was a founding member of Inttra, the portal set up in 2000 in cooperation with Maersk Sealand, P&O Nedlloyd, Mediterranean Shipping Co. and other carriers.

"Inttra for us was a bit slow when it was introduced and could not cover the customers' requirements in a manner which we had anticipated," Adrion said.

"Our first step was to get EDI with customers, because Inttra was not ready to do the whole (transaction)," Adrion explained.

Inttra has made some progress since its start. Adrion said the portal now meets the requirements and that he is "absolutely" satisfied with its results.

"The customers can see that Inttra has improved to an extent that they can also take advantage of it," Adrion said.

Today, about half of the electronic customer transactions handled by Hapag-Lloyd are generated through Inttra, while the others originate from direct EDI customers.

"Very big customers prefer direct EDI connections," Adrion noted. Medium-sized customers and big forwarders tend to work through Inttra.

Panalpina, the big Swiss forwarding group, transfers data electronically to Hapag-Lloyd using both EDI connections and Inttra.

"With Hapag-Lloyd, we have an EDI pilot," said Thomas Eisenblaetter, managing director, ASB Air Sea Broker, a unit of Panalpina. "We do the bookings through EDI."

"I think they have a good system and they have experience," the forwarder added.

Hapag-Lloyd's head office in Hamburg.

Hapag-Lloyd uses EDI and Inttra as two parallel electronic channels to work with customers.

"We let the customer choose — the main objective for us is to get the electronic link, whether it is by Inttra or by direct EDI," Adrion said. "We want to concentrate on (getting) further electronic links with customers ... That's good for the customer ... and it's also good for us."

Fleet, Service Changes. With some 48 containerships and about 60 services, Hapag-Lloyd isn't the biggest container carrier. But it belongs to the Grand Alliance with NYK, OOCL, P&O Nedlloyd and Malaysia International Shipping Corp. and is repeatedly launching new services.

In 2005–06, Hapag-Lloyd will also take delivery of five 8,000-TEU containerships.

Hapag-Lloyd grows market share

(Traffic in million TEUs, % annual increase)

Year	Hapag's traffic	increase	World traffic	increase
1998	1.24		50	
1999	1.38	11%	55	10%
2000	1.57	14%	57	4%
2001	1.68	7%	58	2%
2002	1.85	10%	61	5%
2003	2.1	14%	66	8%
2004 estimated	2.4	15%	72	13%

Source: ComPairData, Hapag-Lloyd.

In early February, Hapag-Lloyd will enter the U.S. East Coast/East Coast of South America liner trade with a new service to be operated jointly with NYK.

In recent months, Hapag-Lloyd has also started services between Asia and Australia, between Asia and the Black Sea, and from the Far East to the Middle East.

Hapag-Lloyd is investigating the possibility of entering additional other trade connections to complement its network.

"We might look into Far East to South America ... We will continue to implement more services," Adrion said. Hapag-Lloyd expects to launch additional services during 2005.

Hapag-Lloyd has been largely an east/west carrier, but it said its repeated moves into north/south routes are not part of a deliberate policy to expand in those trades.

"We look at it from a global perspective," Adrion said. "When the cargo flows are requiring that we are there with our network, then we do it."

New Focus? Hapag-Lloyd AG is concentrating again on its traditional business: shipping.

The company has sold its non-shipping logistics activities, including forwarder Pracht, mobile unit builder Algeco and bulk logistics provider VTG-Lehnkering. These divestments were initially part of a plan to have an initial public offering on the stock market as a focused shipping company.

But TUI AG, the parent company of Hapag-Lloyd, canceled the IPO plan in September, citing the adverse situation in the capital markets during the preparations for a possible IPO of Hapag-Lloyd.

TUI reported that Hapag-Lloyd enjoyed a "brisk growth" on the Far East/Europe route and higher volumes in the intra-Asia lane in the third quarter of 2004.

The carrier's transpacific volume rose 12 percent to 162,000 TEUs in the third quarter, while transatlantic cargo volume increased 13 percent to 157,000 TEUs.

"The current business trend is characterized by an increase in transport volumes and high freight rates," the parent company said. ■

Ship agents aim to go global

Regional ship agents offer one-stop global service through structured alliance.

By Philip Damas

"We recognized the need to serve global customers," said Win Thurber, chairman of S5, a new global ship agency venture that brought together seven major regional agents from around the world.

The backers of S5 believe ship operators need a global, or trans-regional agency service for their ships, with combined data and financial flows that mirror the worldwide operations of their ships.

But Thurber, who remains chief executive officer of Kerr Norton Strachan, one of the owners of S5, said it's not productive for regional ship agents with global ambitions "to go and buy companies all over the world."

"People have done that and it has not worked," he said.

Instead, Kerr Norton Strachan in the Americas, Kanoo in the Middle East and India, Jardine Shipping Services in Asia, Royal Burger Group in northern Europe, Euroshipping in southern Europe and West Africa, Sturrock Shipping in southern and East Africa, and McArthur in Australasia have each invested "several million dollars" in the S5 organization.

S5 is not a loose network of regional agents like the Multiport ship agency network, but a corporation with a legal entity and its own management and information technology system.

The five "S"s in S5 stand for shipping, service, systems, solutions and security. The company has regional hub centers in the United States, northern Europe, southern Europe, the Middle East, South Africa, Asia Pacific and Australia.

The company will offer ship operators "a single contract backed by a contractual framework with its stakeholders," said Nick Lane, chief executive officer of the company and a former senior executive at Kanoo in Asia.

London-based S5 said it will provide major ship operators, ship owners, charterers and managers with worldwide agency coverage while maintaining strong local contact points.

A former CEO for liner shipping services at Inchcape Shipping Services, Thurber said S5 will provide liner carriers with ship husbandry services in port, rather than sales and commercial representation.

"We're not going to be a disruptive force in the market."

Win Thurber
chief executive officer, Kerr Norton Strachan; chairman, S5

Volumes, Competition. S5's stakeholders handle 40,000 ship calls between them, of which about 25,000 are liner ship calls, Thurber said. S5 will target ship operators in the liner, breakbulk and tanker shipping commercial sectors, as well as the navies.

S5 aims to sign up to four customers in the next year, each representing about 5,000 calls a year.

Thurber estimates that S5's top global competitors in the ship agency business — Inchcape, GAC and Barwil — each handle about 30,000 ship calls a year.

He said the company will promote its service quality, not undercut prices. "We're not going to be a disruptive force in the market," he said.

He also rejected the view that ship husbandry has become a commodity. "It's 100-percent a service," Thurber insisted.

New Entity. Until recently, the main trend in the ship agency business has been industry consolidation.

Agencies that specialized in marketing and sales for liner carriers have also lost their core business after most container carriers set up owned agencies around the world.

In 1999, Thurber and J. Schley Rutherford acquired Strachan Shipping Agency, based in Mobile, Ala.

In 2002, Strachan Shipping Agency acquired another big agency, Norton Lilly International, and created the largest provider of agency services in North America, now called Kerr Norton Strachan.

At about the same time, Thurber and other senior agency executives — Lane and David Barker at Kanoo, and Terence Sit at Jardine, all located in Asia — were discussing joining forces. These talks laid the grounds for what became the S5 venture.

The partners considered setting up a loose network, but quickly rejected the idea in favor of a joint company.

S5 is "owned and supported by regional market leaders in the shipping agency business," Thurber said.

The company's IT system is hosted in India. Its "international financial hub," responsible for processing financial flows between the company, port offices and ship operators, is located in Mobile, but with regional hubs on other continents.

"We have very low central costs," Thurber said.

Instead of having 30 or 40 daily financial transactions with ship operators, S5 will combine them through the financial hub into just one, a spokesman said. To ensure prompt payments to the relevant port offices, S5 and its backers will work through a single bank. Meanwhile, the international hub of S5 will consolidate the many "disbursement accounts" from all ports around the world, and carry out cost analyses.

S5 believes it will therefore provide full transparency of fund flows.

Besides Thurber as chairman and Lane as CEO, S5's management team includes Graham Bog as chief operating officer.

Within S5, Kerr Norton Strachan will work with Agunsa, the Chilean ship agent, in South America. ■

Carriers add capacity in Asian trades

Additional ship capacity matched cargo growth in headhaul Asian trades to North America, Asia.

By Philip Damas

Despite a shortage of containerships in the charter market, shipping lines have added substantial capacity in the major Asian east/west trades, according to reports prepared by ComPair Data.

The January World Liner Supply reports of Jacksonville-based ComPair Data, a business partner of *American Shipper*, found that tradewide eastbound transpacific capacity rose 17 percent to about 298,0000 TEUs a week on Jan. 1 of this year, from about 255,000 TEUs a week at the beginning of 2004.

Westbound capacity in the Asia-to-Europe trade expanded 18 percent to about 217,000 TEUs a week on Jan. 1, from about 183,000 TEUs in January 2004 (see table).

The annual increases in nominal ship capacity match relatively closely the growth of cargo volumes in these two trades. In the headhaul (ex-Asia) direction, cargo volume in the transpacific trade is estimated to have increased 13-15 percent in 2004, while Asia-to-Europe box traffic is expected to be up about 17 percent.

Shipping lines added five transpacific services and four Asia/Europe services before the 2004 peak season and have increased the average capacity of ships in both trades at the same time, ComPair Data said.

However, some of the additional capacity was offset by delays or ship diversions caused by congestion on the U.S. West Coast during the peak months.

Asian Convergence. According to London-based Clarkson Research, the world's cellular fleet capacity increased 9.7 percent over the past year.

This overall figure is much lower than the 17-18 percent capacity growth witnessed in the two major Asian container trades over the same period.

The difference means that much of the additional ship capacity delivered in the past year has joined the Asian container trades as the allocation of ships was very uneven between the world's various trade routes.

The transatlantic trade is one of the trade routes that have received only a modest amount of additional ship capacity — 5 percent — since last January.

"Over the past four years, the North America/North Europe trade has continually seen only a marginal increase in supply, while the booming Asian trades have attracted most of the additional capacity," ComPair Data said.

The ratio between the headhaul eastbound Pacific capacity and the headhaul westbound Atlantic capacity was 3:1 in January 2001, but widened to 5:1 in January 2005, ComPair Data said.

On Jan. 1, liner-shipping companies employed 565 ships in the transpacific trade on 79 joint or individual liner services. At the same date, 433 vessels were deployed on 50 services in the Asia/Europe trade.

This winter, unlike previous years, few transpacific carriers suspended services that were launched before the summer/fall season to handle the seasonal peak cargo volumes. The only service suspended so far this winter was the PS5/TP5 Asia/U.S. West Coast weekly service operated by APL and MOL.

As shippers route an increasing proportion of their Asian cargoes through U.S. East and Gulf coast ports, shipping lines continue to focus a greater share of their capacity to those all-water routes. ComPair Data estimates that some 60,000 TEUs in weekly capacity is now provided on routes to the U.S. Gulf Coast, U.S. East Coast and Halifax, as compared to 239,000 TEUs a week offered on routes to ports on the Pacific coast of North America.

All-water East and Gulf coast services that have added capacity in the fourth quarter include the new AWE-4 service of COSCO, "K" Line, Yang Ming and Hanjin (via the Panama Canal) and the Pacific Gulf Express loop of China Shipping, CMA CGM, P&O Nedlloyd and FESCO (also via the Panama Canal).

Services from the Far East to the U.S. East Coast transit via the Suez Canal are still rare, compared to numerous services that now use the Panama Canal routing. They cover only a few Asian ports and tend to have slow transit times. According to ComPair Data, there are only five Far East/U.S. East Coast liner services via Suez. They are:

- The Grand Alliance AEX service of Hapag-Lloyd, NYK, OOCL and P&O Nedlloyd from Singapore and Laem Chabang to Halifax, New York, Savannah and Norfolk (with a 26-day Singapore-to-New York transit time).
- The Westabout round-the-world service of P&O Nedlloyd, Contship, CMA CGM, Hamburg Sud, Marfret and Hapag-Lloyd from Singapore to New York, Norfolk and Savannah (35-day Singapore-to-New York transit time).
- The South Asia service of Indotrans from Jakarta and Singapore to Halifax, New York, Camden, N.J., Morehead City, N.C., Savannah, New Orleans, Freeport, Texas and Houston (41-day Singapore-to-New York transit time).
- The Pearl String service of Rickmers-Linie from Dalian, Xingang, Shanghai, Qingdao and Masan to Houston, New Orleans

Capacity in three main east/west trades

(TEUs per week)

Weekly capacity by trade route	January 2004	April 2004	July 2004	October 2004	January 2005	% change 10/04-1/05	% change 1/04-1/05
Transpacific (eastbound)	255,178	253,676	275,908	291,952	298,390	2%	17%
Asia/North Europe/Med (eastbound)	183,159	195,372	204,898	215,814	216,594	0%	18%
North America/North Europe (westbound)	60,712	63,543	64,566	63,688	63,817	0%	5%
3 main headhaul east/west trades	499,049	512,591	545,372	571,454	578,801	1%	16%

Source: ComPair Data's World Liner Supply capacity reports.

and Camden, N.J.

• The Round-the-World service of Norasia, China Shipping, Zim and Gold Star from Shanghai, Ningbo, Xiamen, Chiwan, Singapore and Port Kelang to New York, Norfolk and Charleston via the Indian subcontinent and northern Europe (51-day Singapore-to-New York transit time).

Paid subscribers to *American Shipper* can download the latest capacity reports from www.compairdata.com/wls.htm.

Cargo volumes and ship capacity are expected to continue to increase in the Asian container trades to and from North America and Europe.

The Transpacific Stabilization Agreement said recently its member carriers expect 10-12 percent eastbound cargo growth this year in the Pacific trade. Shipping lines of the Far Eastern Freight Conference said in December that Asia-to-Europe cargo volumes would expand 17 percent to 6.1 million TEUs in 2005, while vessel capacity would increase 15 percent on that route. ■

Menzies book floats controversy

China's 'treasure fleets' suggest what the future may hold.

By Robert Mottley

Gavin Menzies, a former British submariner whose bestselling book, *1421 – The Year China Discovered America,* reached a larger audience this summer as the basis of a public television documentary, knows how to launch a story.

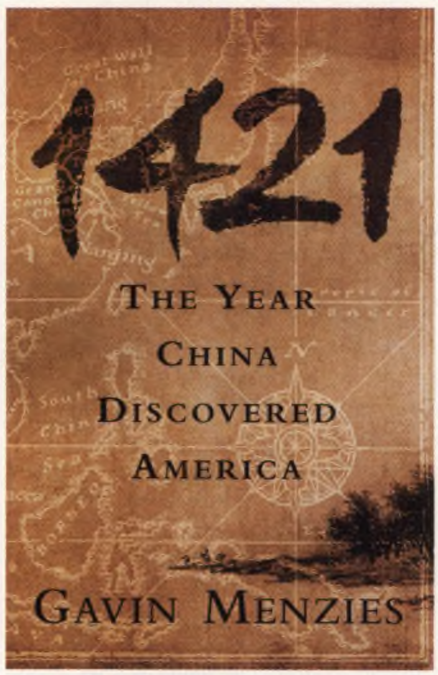
The riveting beginning of *1421* describes how the Chinese emperor Zhu Di of the Ming dynasty built successive "treasure fleets" to sail to known and unknown lands, establishing China's hegemony by means of huge trading convoys, each with hundreds of ships.

The emperor relied on his commanding admiral, Zheng He, to plan and execute such far-flung maritime endeavors. Zheng He had been born in Kunming, a Mongol stronghold that fell to the Chinese in 1382. The conquerors killed all adult males and castrated prisoners who had not reached puberty, one of them being the future admiral. Brought to the imperial court, he eventually became the emperor's closest adviser. Of the four fleets under Zheng He that were to extend China's reach beyond prior voyages, three were commanded by eunuch admirals who, like Zheng He, had proved their loyalty to Zhu Di.

Each of Zheng He's capital ships, made of teak, had nine masts of red silk sails and measured 480 feet long and 180 feet wide, large enough to swallow 50 fishing boats.

These huge vessels "could remain at sea for three months, covering at least 4,500 miles without making landfall to replenish food and water, for separate grain ships and water tankers sailed with them," Menzies wrote.

There were also separate horse-ships transporting mounts for cavalry. The mammoth Chinese junks carried assorted species of plants and animals, including



soils for vegetables, tubs for tofu, livestock, dogs, as both pets and food; Asiatic chickens, as well as crates of porcelain, jade and silk textiles for trading purposes. Their crews included seamen, soldiers; sculptors to chisel inscripted monuments to be left in lands visited; cooks, astronomers, engineers, metallurgists, botanists, envoys, physicians and courtesans, all of them under the commanding admirals who had the power of life and death in their fleets.

According to Zheng He's plans, one fleet under admiral Yang Qing departed early with an assignment from the emperor to determine longitude. On March 5, 1421, three other fleets comprising as many as 200 large junks and their supporting flotillas, carrying 20,000 people, sailed under admirals Hong Bao, Zhou Man and Zhou Wen.

By the time a very few ships made it back to China in 1423, the fleets had circumnavigated the globe. The surviving returnees found their emperor dying along with all of the assertiveness that had launched their voyages in eclipse. China was turning in on itself, beginning five centuries of isolation. Successive emperors forbade overseas travel, which they believed to be unproductive and un-Confucian. Most logs and journals of the treasure fleets were deliberately destroyed.

The voyages of Zheng He's admirals remained little known among Western scholars. In terms of accessible histories in English, the most notable before Menzies' book was *When China Ruled the Seas: The Treasure Fleet of the Dragon Throne,* 1405-1433, by Louise Levathes (1994).

Menzies once commanded a British nuclear submarine. After retiring from the Royal Navy, he worked for 10 years on a manuscript about Zhu Di and his nemesis, the Mongol Tamerlane. As part of Menzies' research, he learned of a Portuguese chart depicting islands in the Caribbean that had been drawn in 1424, 70 years before Columbus. Menzies then abandoned his former project and began to pore over more old maps. What he found justified, in his view, the title of his eventual book, published in the United Kingdom as *1421 – The Year China Discovered the World.* A slight alteration was made for the U.S. market.

Furor. In *1421,* Menzies details his steps toward conclusions that have created a furor among historians. One ancient map led to another, and another, all suggesting that Chinese junks had rounded the Cape of Good Hope, stopping along the West African coast, before being carried by immutable currents across the Atlantic. Menzies asserts the Chinese not only discovered America, but also established coastal colonies in New England and California, among other sites, decades before Columbus "sailed the ocean blue."

After going around the tip of South America, some Chinese ships made it to Antarctica, Menzies surmises, before crossing the Pacific and mapping Australia. He believes that other junks traversed what is now called the Northwest Passage, from Greenland to the Bering Sea.

"To assert the primacy of the Chinese exploration of the new world … is not to denigrate the achievements of Dias, Columbus, Magellan and Cook," Menzies concluded. "But it is now time to honor other men who have been allowed to languish in obscurity for too long," meaning Zheng He and his admirals. "Those who followed them

… were sailing in their wake."

Those have proven to be fighting words. On the Internet, one can find Web sites debunking Menzies, filled with fiercely written screeds by scalded historians who have the most to lose if he should be remotely on the mark. Tests have indicated that Chinese DNA exists in native peoples around North America's coasts, and tantalizing signs abound of sunken or abandoned junks.

A reader doesn't have to accept Menzies' claims of how far the Chinese reached on their epic voyages to be impressed with his description of how they mastered longitude before anyone else, by recognizing the need to find points on the surface of the earth directly beneath the star Canopus, which is not visible north of 37 degrees latitude, and the Southern Cross. Menzies' calculations also show how Chinese who chartered coastlines around the world 600 years ago did an astonishingly accurate job.

The compulsive readability of *1421* is not to be denied, nor the author's addictive passion that he is on to something big. Menzies' own navigational expertise is never in question, and flashbacks — some of them quite amusing — to his submarine days are cannily used to advance his theories.

Yet stepping back from the text, one sees how frequently, when Menzies isn't writing about mapmaking and charting, a hypothesis becomes a fact before a page is turned. Saying doesn't make it so, and the author's imagination, running uncurbed at full-tilt, occasionally draws him into errors that his editors should have corrected. For example, the dog-faced, 12-foot-high mylodons, which Menzies alleges that the Chinese picked up in Patagonia, actually became extinct several thousand years ago.

This is a grand story, but it isn't history. Someone else will take care of that later, if enough hard facts emerge to confirm what Menzies has projected so boldly. Meantime, he has shaken European, American and even Chinese scholars to their roots, making them rethink tenets that had become inviolate. His invigorating theories reinforce the notion that China's re-emergence in our time, on its way to being the world's second superpower, was all foretold long ago.

1421 — The Year China Discovered America, by Gavin Menzies; U.S. edition, William Morrow, an imprint of HarperCollins; 2003 paperback edition, $15.95. ■

MarAd releases new MSP participants

New Maritime Security Program makes available 60 U.S. flag ships for Defense Department use.

WASHINGTON

The U.S. Maritime Administration has released its list of U.S.-flag cargo ships to operate in the federal government's new Maritime Security Program.

The 2003 Maritime Security Act authorized the creation of a new MSP program to ensure that the Defense Department has immediate access to a fleet of 60 militarily useful commercial U.S.-flag ships during times of war or national emergency.

The reauthorized program includes annual funding for fiscal years 2006-2008 of $156 million and increases to $174 million in fiscal years 2009-2011, and t $186 million for fiscal years 2012-2015.

The original MSP, established in 1996, and set to expire Sept. 30, includes 47 ships, of which more than half are container ships. Under the new MSP program, these 47 ships were grandfathered into the new program. These include the largest MSP operators: Maersk Line Ltd. with 19 containerships and APL Marine Services with nine containerships.

MarAd began accepting applications for MSP over a two-week period, starting Oct. 1. These applications included 142 ships available for the new 60-vessel MSP program. MarAd had to whittle down the application pool to 13 vessels for the new MSP program by mid-January.

The new MSP participating ships and their operators are:

- *Maersk Rapier* (tanker), OSG Shipholding Group.
- *Maersk Regent* (tanker), OSG Shipholding Group.
- *Maersk Richmond* (tanker), OSG Shipholding Group.
- *Hercules Leader* (roll-on/roll-off), Central Gulf Lines.
- *Takasago* (ro/ro), Fidelio Limited Partnership.
- *Resolve* (ro/ro), Fidelio Limited Partnership.
- *Otello* (ro/ro), Fidelio Limited Partnership.
- *Aida* (ro/ro), Fidelio Limited Partnership.
- *Splendid Ace* (ro/ro), Liberty Global Logistics
- *Lykes Motivator* (gear cont.), Lykes Lines Ltd.
- *TMM Yucatan* (gear cont.), Lykes Lines Ltd.
- *Industrial Challenger* (heavylift), Patriot Shipping.
- *Industrial Chief* (heavylift), Patriot Shipping.

"The structure of MSP encourages flexibility as operators are able to upgrade their fleets to compete in the global marketplace," MarAd said in a statement. "MarAd approvals are required to ensure that vessels entering the MSP contracts meet DoD's (Defense Department's) needs."

MarAd and the Coast Guard have established expedited procedures to encourage reflagging of modern, efficient vessels into the U.S. fleet.

For example, the four mid-1990s vintage ro/ro vessels brought to the new MSP program by Fidelio Limited Partnership will be transferred from the company's parent Wallenius Wilhelmsen Lines' foreign-flag fleet through these expedited re-flagging measures.

During the 2002 MSP hearings before the House Armed Services Committee, Defense Department officials specified their need to diversify the MSP fleet beyond containerships, and encouraged enrollment of more roll-on/roll-off vessels, in addition to product tank vessels and other specialty ships.

The reauthorized MSP requires the enrollment of five new U.S.-flag product tank vessels. However, these slots have been temporarily filled with other vessels, including the three Maersk tankers operated by OSG and the two Industrial heavylift ships operated by Patriot Shipping. MarAd will remove these vessels once the five new U.S.-constructed product tankers are awarded. ■

Two Customs and Border Protection officers review an individual's information before he comes into the United States.

U.S. Customs grounds pilot

Agency postpones field tests of electronic truck manifest.

By Eric Kulisch

After three weeks of field tests, U.S. Customs and Border Protection pulled the plug Jan. 3 on a program designed to capture electronic manifest data transmissions from commercial vehicles crossing the border.

In a notice to importers, customs brokers and motor carriers, the CBP office in Blaine, Wash., said it had shut down the electronic truck manifest pilot test that began Dec. 11 to process truck cargo data through the Automated Commercial Environment (ACE) computer system currently under construction.

"The expectation is that in the future, after system enhancements, the ACE electronic truck manifest will return to Blaine for a second 'pilot' test," said Jay Brandt, assistant port director, in the notice obtained by *American Shipper.*

No reasons for the postponement were given at the time, but in a subsequent interview Bill Inch, acting deputy director of the CBP Modernization office acknowledged the system was plagued with "significant" technical problems that made it sluggish in the short period it was operating.

"We view this as a very short-term pause," Inch said. "We are working hard to get back up over the next several weeks. We will inform everybody when we are ready."

"They realized the test was not going quite as well as we had hoped, and for this program to be effective it is going to require a lot more changes and software fixes before customs rolls it out to different ports," said Mark Johnson, president of McClary, Swift & Co. — Blaine Inc. "It was a wise decision on Customs' part to recognize that."

Blaine was the first border checkpoint to test the ability of motor carriers to automatically transmit truck manifest data and obtain release of their cargo, driver and equipment via the ACE portal or electronic data interchange messaging. In the first week of the test, CBP officers processed 6,279 trucks via the secure ACE portal, according to the December issue of CBP's *Modernization* newsletter.

Plans to expand the automated truck manifest test to Buffalo, N.Y. in January, followed by five other ports shortly thereafter, have also been placed on hold.

The truck manifest is supposed to speed up processing at the border by eliminating the use of paper documents and allow CBP to automatically match up the truck manifest with the customs entry filed by a broker ahead of arrival.

But the new system proved so labor intensive that it caused four to five-hour backups during the first couple days of testing, according to Johnson and other sources.

Johnson said that to the best of his knowledge there was only one trucking company that had a working Automated Manifest System account. Other trucking companies have applied for the program but haven't gone through training to be certified to use the program. That meant Customs personnel at the border were forced to key in the manifest data for the trucks.

Johnson and other customs brokers said the electronic truck manifest actually requires more data elements than there are on a normal customs entry, causing delays to input the carrier's name, address, driver, shipper, the cargo description and other information.

CBP made a big effort to reduce the wait times by cutting back on some of the data entry when it recognized testing was causing unacceptable delays, he said.

"They didn't have that many carriers signed up (and prepared) for the actual test. They wouldn't be able to tell how effective this would be. If they only had one or two results the test wouldn't be significant," Johnson said. "I think they realized there were a lot of problems that they hadn't anticipated."

Inch said border transit delays were primarily a function of slow system response rather than data entry requirements, but added: "We've got to make (the carriers) understand the importance of getting certified."

Average wait times during the first week increased about 70 minutes to 89 minutes, compared to the same period in 2003, Inch said. After correcting several performance problems, wait times decreased to 51 minutes the second week and to 22 minutes the third week, only three minutes more than last year.

Despite the system fixes, CBP decided to suspend the program to correct other technical and usability issues. Inch said technicians identified about 18 separate problems, of which seven had a direct impact on the inspection officers in the primary booth and wait times.

Problems have occurred when converting BRASS (an expedited cargo processing program) entry data from the old Automated Commercial System to the new ACE, according to Johnson. The process often creates duplicate entry numbers for the same shipment or assigns one entry number to multiple shipments. The system also assigned different release dates than the brokers automated transmission system for cargo being released under the Pre-Arrival Processing System.

Johnson, who also is a board member of the National Customs Brokers and Forwarders Association of America and the Northern Border Customs Brokers Association, said he welcomed the postponement because truckers and brokers are still learning to cope with three major changes to customs procedures — advance manifest transmissions, ultimate consignee information and classifying low-value shipments — within the past two months.

"To throw in a brand new system at the same time, I didn't think the timing was appropriate to begin with," Johnson said.

Under a three-phase implementation process that began Nov. 15, CBP is requiring motor carriers to prefile manifest data about their cargo before arrival at a U.S. port of entry so analysts can identify loads with potential criminal or terrorist connections. Congress mandated the collection of advance collection of inbound and outbound cargo information by electronic means for all modes of transportation for homeland security purposes. The final group of land ports is scheduled to begin accepting advance cargo transmissions on Jan. 14.

Under the new rule, truckers will no longer be able to show up at the border and hand over paper shipping documents. However, since there is no automated data exchange system for trucks in the Automated Commercial System, motor carriers have to use electronic transmission systems originally set up for other purposes. Truckers can rely on customs brokers to file their manifest information on their behalf through the Automated Broker Interface as part of the barcode-based Pre-Arrival Processing System and in-bond reporting systems.

The change has caused a lot of confusion for truckers about where and how far in advance to submit paperwork, according to trucking industry sources. Normally, there is not a lot of communication between the carrier and the broker because the broker works directly for the importer. The problem with the current system — cobbled together until the electronic manifest is developed — is that there is no available form of electronic messaging for the broker to notify the driver that the customs entry has been filed and that he can proceed to the CBP checkpoint.

"The trucker faxes his forms to the broker and then it falls into a black hole," said a trucking industry source. Instead of submitting the information one hour (or 30 minutes in some cases) in advance of arrival at the border, as the law requires, some brokers are telling truckers they need the information three to five hours earlier so they can process it through their system to CBP.

Other changes on the border went into effect in October. That is when CBP began requiring importers or their designated agents to supply the Internal Revenue Service tax number (or Social Security number for individuals) of the ultimate consignee in the United States. The move is part of a wide-ranging CBP effort to crack down on accurate reporting of import details to help agents analyze commercial trade data for potential threats associated with shipments. Brokers and importers had been able to just transmit the name and address of the consignee if the federal tax ID number was not available.

The change has caused a significant increase in the brokers' workload to research the ID number for each consignee. Complicating the effort is the fact that American companies are often reluctant to give out their tax number to a broker with whom they have no business relationship since the broker's client is the foreign shipper.

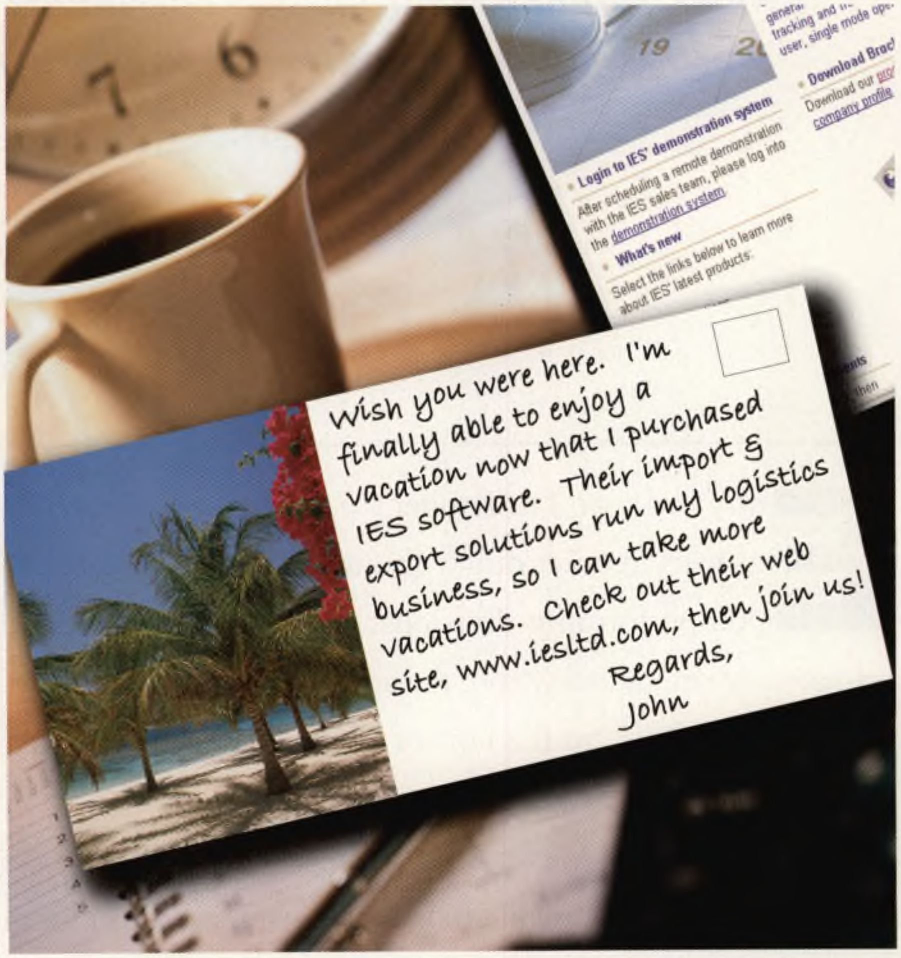
In October, CBP also changed its long-standing practice of not having to report line by line on the Customs entry form each shipment valued under $2,000 until 10 days after shipments have been released. Under the new policy, importers must report tariff classifications for all merchandise regardless of value in order to secure the release of their goods. The change is also increasing workloads for brokers who have to gather and enter all the extra data. Shipments that cannot be classified quickly are experiencing delays, which can also cause a backlog for other shipments, brokers say.

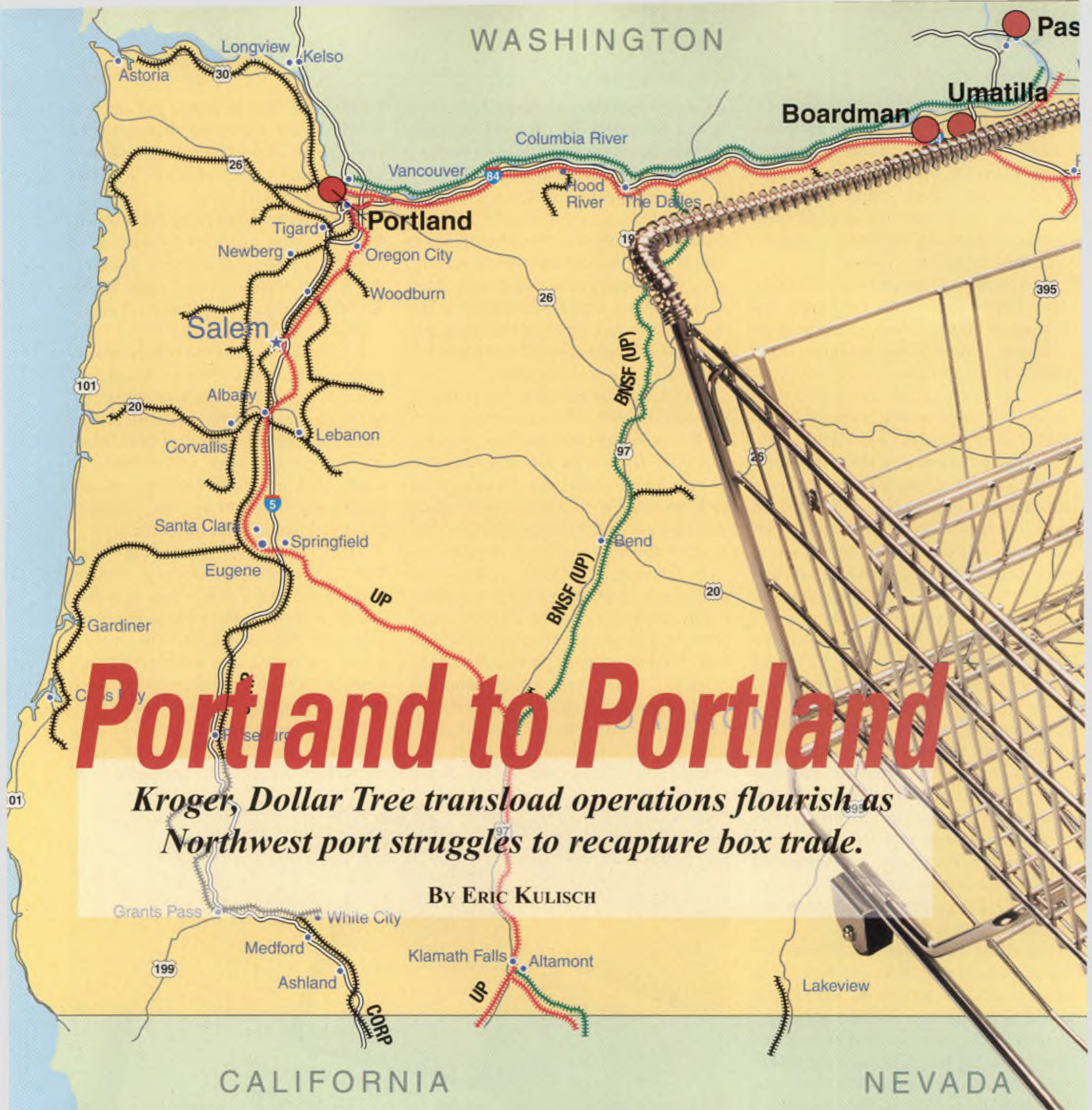
CBP rejected a request by the Northern Border Customs Brokers Association to consider a gradual phase-in by lowering the $2,000 threshold over time, FedEx Trade Networks said in a customer bulletin last summer.

The electronic manifest will eventually give carriers control over their own destiny. It is also designed to give inspectors the ability to see all entry data from different release programs for all the shipments on the truck in one integrated screen without having to toggle back and forth between different screens and different computer systems to check compliance with customs rules.

"They recognized the limitation of this. They've got enough (lessons) to work on to fix these major things and then they can retest with a better system, and in the meantime they will have more carriers signed up for this and then maybe it will give a better representation in the real world once it gets going," Johnson said.

"The nature of it is, this is what a pilot is about — so let's take the time to get it right," Inch said of CBP's approach. ■





Portland to Portland

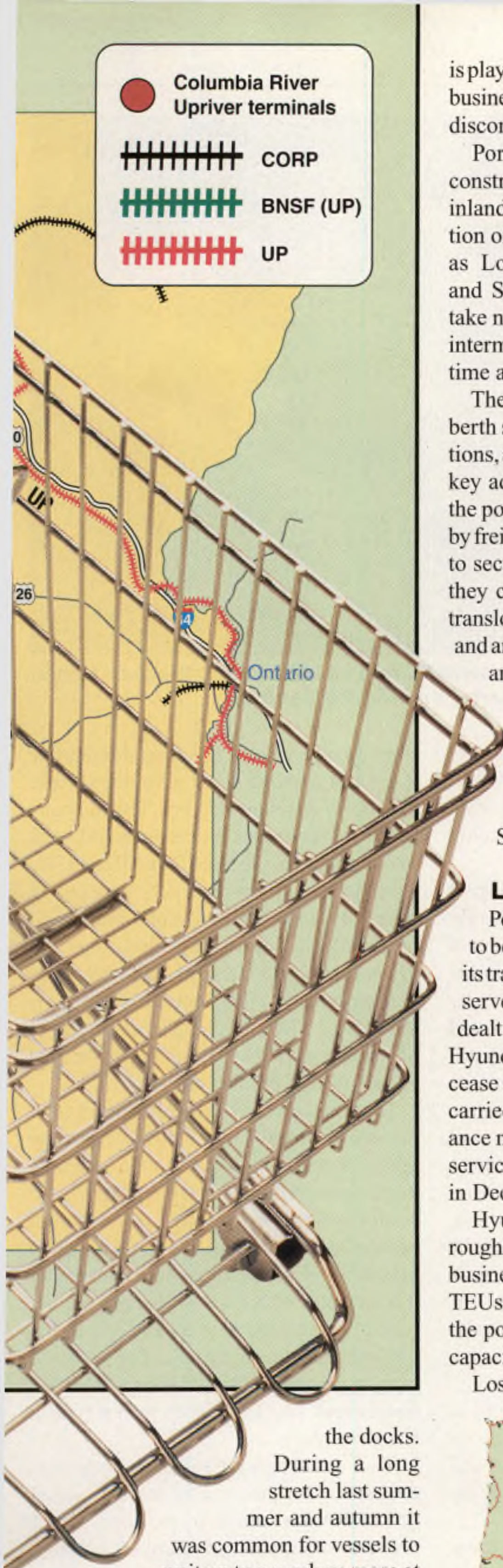
Kroger, Dollar Tree transload operations flourish as Northwest port struggles to recapture box trade.

By Eric Kulisch

Early last year, The Kroger Co. downsized. The large grocery retailer didn't shutter any stores or sell off non-performing divisions. Instead, it switched its primary import gateway from the sprawling port complex in Long Beach, Calif., to the Port of Portland, a much smaller marine facility on the Columbia River in Oregon.

Every week, Fred Meyer Stores Inc., Kroger's West Coast subsidiary, receives containers full of consumer electronics, housewares and other general merchandise from a Hanjin Shipping vessel calling the port. The containers are trucked a couple of miles to a transfer station where the contents are pulled out of 40-foot ocean containers and repacked in 53-foot domestic containers for rail transport to Kroger's main distribution center, which happens to be in Portland, Tenn.

Kroger's decision to use Portland as an alternative import center now appears to be prescient in light of all the congestion problems that subsequently plagued the major Southern California ports most of last year, as imports piled up faster than terminals could unload ships and move cargo off



the docks. During a long stretch last summer and autumn it was common for vessels to wait up to a week or more at anchor for a berth. Railroads were also caught shorthanded and experienced severe delays throughout their networks trying to keep up the increased flow of transcontinental intermodal traffic.

The switch to Portland ahead of the infrastructure meltdown meant the Kroger group avoided delays for most of its cargo arriving from Asia.

And that is a message the Port of Portland is playing up in its effort to recover container business lost when two liner carriers recently discontinued service there.

Port officials hope to overcome the constraints of marketing a small market, inland port by capitalizing on the frustration of shippers who depend on ports such as Los Angeles-Long Beach, Oakland, and Seattle-Tacoma, and getting them to take notice of Portland as the less crowded intermodal alternative that can save them time and money.

The port is pitching available land, free berth space, easy rail and highway connections, and new infrastructure investments as key advantages for moving cargo through the port. Officials, who had been criticized by freight forwarders for neglecting the need to secure more containerized imports, say they can replicate for other importers the transloading success experienced by Kroger and another big retailer, Dollar Tree Stores, and in the process attract ocean carriers back to Portland.

"We don't want to become Seattle and Tacoma, but we can make three to four carriers very successful," said Marine Director Sam Ruda.

Liner Shrink. For the moment, Portland's container business appears to be on life support. When Kroger started its transloading operation three ocean lines served the port. But last July the port was dealt a severe blow when "K" Line and Hyundai Merchant Marine said they would cease calling the port. Hyundai, which also carried cargo for fellow New World Alliance members Mitsui and APL, suspended service in July. "K" Line's last delivery was in December.

Hyundai and "K" Line accounted for roughly two-thirds of the port's container business, which reached a record 339,571 TEUs in 2003. Through November 2004, the port handled 260,428 — about half its capacity.

Los Angeles-Long Beach, by comparison, handled more than 9.2 million TEUs in 2003.

The 15th-largest volume container port in the United States, Portland has historically lost money on its container business compared to its profitable bulk cargo and auto operations, but "we were getting close to breakeven on a monthly basis prior to the pullouts" as container handling productivity increased, Ruda said.

The departures forced the port to cut 50 full-time positions and leave 31 others unfilled, spokesman Eric Hedaa said. Port staff estimates the annual net revenue loss to be $12.4 million.

Hyundai said it suspended service because it had too many Pacific Northwest port calls (four) to maintain tight schedules for its seven other destinations, and because the Columbia River channel is not deep enough to handle larger ships, forcing them to sail at less-than-full capacity.

"K" Line's decision was based on its desire to support its own terminal at the Port of Tacoma in Washington with more business, according to David Mills, senior vice president of "K" Line America. He said the company is investing in more capacity at its facilities in Tacoma and Los Angeles-Long Beach as it brings on larger ships in excess of 8,000 TEUs, and that it wanted to put the extra space to productive use. "K" Line continues to serve the port with car and bulk carrier service, and will still transport containers to customers in the Portland area via truck or rail from Tacoma, he stressed.

Carriers also face more direct costs than some other ports in terms of longer transit times, high port charges, less efficient dock labor as measured in container lifts per hour, and the need to pay for two pilots — a bar pilot to bring the ship into the mouth of the river and another pilot to take it up the river, according to local industry officials.

The pullouts left Hanjin as the sole container carrier directly serving Portland. The port has been marked by inconsistent carrier service. Evergreen Marine Corp. stopped calling on Portland in 2001. And on two previous occasions, including as recently as December 2001, Hanjin cut Portland from its Northwest rotation for short periods before returning again.

This time the situation is more serious. The loss of two-thirds of the container service has jolted

port officials, who tended to ride out the economic cycles of the carrier and agriculture export businesses secure in the knowledge that some carrier would eventually return, to rethink how they do business as the rising tide of imports dwarfs U.S. exports.

But circumstances beyond the port's control could soon revive its flagging fortunes as importers and carriers balance Portland's inherent disadvantages — an extra eight to 10 hours sailing time (one way) to travel the 108 miles to Portland, and a river that is not deep enough to handle fully loaded 5,500 TEU container vessels — against the multi-day waits to get cargo in and through major West Coast ports.

In late October, Hanjin reshuffled its transpacific services to free up bigger ships caught up in port delays at the Port of Long Beach. The Korean line flip-flopped 5,500-TEU ships serving Long Beach and Oakland with 4,000-TEU ships serving the ports of Seattle, Vancouver and Portland. In addition to increasing the size of ships serving Pacific Northwest ports, Hanjin also added a stop in Tokyo to its other Asian destinations to replace "K" Line's direct Japan service. Hanjin previously provided Japan import and export service by leasing slots from fellow CKYH alliance member "K" Line rather than duplicate direct service with its own vessels.

The situation in Long Beach will continue to be the overriding factor in how the carrier decides to adjust its network. Jeff McEwen, Hanjin's regional manager, suggested that the service restructuring may not be as temporary as some had initially expected. Hanjin is projecting an 18 percent increase in capacity in the Pacific Northwest service and a 2 percent reduction in Pacific Southwest service in 2005 as the Northwest ports, which enjoy slightly better rail capacity, become a preferred option for intermodal cargo destined for Chicago, he said. Hanjin will continue to offer service to Japan but is considering transshipping on smaller vessels to Japan from Pusan, Korea, instead of direct service, McEwen said.

Hanjin's decision to add a Tokyo stop was especially critical for agricultural exporters, paper producers and lumber interests who relied on the other ocean carriers for access to the Japanese market and were faced with losing direct container service to Japan. More than 50 percent of containerized cargo exported from Portland is sent to Japan, according to port officials.

The Korean line said a strong factor in its decision to upgrade service to Portland was the commitment to higher import levels from Fred Meyer. Hanjin has been Fred Meyer's exclusive carrier for 17 years.

Since "K" Line and Hyundai Merchant Marine ceased calling the port, Hanjin has been the sole container carrier serving Portland.

Kroger, Dollar Tree. Kroger and Dollar Tree serve as the template Portland port officials are now promoting to attract other importers to set up national distribution centers in the area.

In the past, most imports through the port were destined for customers in the Pacific Northwest. But the region's relatively small population and small volume of imports consumed in the area compared to major metropolitan areas like Los Angeles and Oakland-San Francisco serves as a disincentive to carriers who prefer to quickly get containers back to Asia. Portland also exports three times as many goods as it imports, but carriers are generally more interested in taking empty containers from large ports to serve the import business, where container rates are as much as 10 times higher, than sending ships to pick up exports.

Transloading solves the carriers desire to recycle their containers faster while also providing cost savings to the importer.

Portland was somewhat of a natural fit as an import gateway for Kroger because its Fred Meyer subsidiary is based there and already used the port to import goods for its own regional stores.

Fred Meyer was Wal-Mart before there was Wal-Mart. The company, founded in 1922, operates supercenters (average size 165,000 square feet) in Oregon, Washington, Idaho, Alaska and Utah that sell groceries, apparel and general merchandise under one roof.

In 1999, Cincinnati-based Kroger acquired Fred Meyer. Kroger is a huge grocery and retail concern with 2,536 grocery and multidepartment stores in 32 states operating under nearly two dozen brands, including flagship supermarket Kroger and others like Ralphs, Frys and Pay Less, as well as a couple of grocery warehouse chains. The company also owns six convenience store brands with 794 stores in 16 states and four different fine jewelry store chains with 439 stores in 35 states. It also operates 42 food processing or manufacturing facilities that churn out private-label products for its stores, plus 520 supermarket fuel centers.

In fiscal 2003, the company had sales of \$53.8 billion. Wal-Mart, by comparison, had \$244.5 billion in sales last year.

Kroger was mostly a grocery store chain at the time of the \$13 billion Fred Meyer merger and imported a limited amount of seasonal items through third party importers. As the company has grown through acquisitions it has tried to offer a wider range of products in seasonal and other categories. In November it opened its first Kroger Marketplace store, based on the Fred Meyer concept, in the Columbus, Ohio, metro area. The store will carry an expanded set of domestic items, housewares and appliances than a typical Kroger outlet.

With the new emphasis on general merchandise came the need for more imported goods. Kroger turned to the Fred Meyer division to coordinate the import business for the entire company because of Fred Meyer's experience as a direct importer of record, said Calvin Kaufman, vice president of logistics for Fred Meyer. The strategy involved taking advantage of Fred Meyer's already developed international supply chain to stock Kroger stores back East with general merchandise that Fred Meyer already purchases and distributes.

With the help of Hanjin, Fred Meyer set up and tested a transloading operation for

Kroger in the summer of 2003 and shifted import operations for the Midwest to Portland in February 2004. The transloading is handled by Seattle-based freight forwarder Expeditors International.

Fred Meyer's own distribution center is about 15 miles from the port. The company also has one near Seattle-Tacoma. The only Kroger products that come through Los Angeles-Long Beach now are those that serve the Southern California, Phoenix and Denver markets, Kaufman said.

Dollar Tree, which sells discount variety goods for $1 at 2,319 stores in 41 states, opened a 665,000-square-foot distribution center in Ridgefield, Wash., 25 miles from Portland, the same month Fred Meyer began full-scale transloading. The facility serves two purposes: as a regional distribution center for the Pacific Northwest and as a major transload facility feeding the company's new 1.2-million-square-foot distribution center in Joliet, Ill., that opened last June.

The Chesapeake, Va.-based retailer started a small transload operation in Portland in 2002 before graduating to the Ridgefield hub. The company leased 10,000 square feet of warehouse space right at the port where it consolidated shipments for rail carriage to its small, original Joliet facility, outside Chicago.

"We wanted to put the DC where it made the most sense for our regional growth, and for the entire network it made sense for us to be further south in the Northwest" than the Puget Sound ports of Seattle and Tacoma, said Steve White, chief logistics officer for Dollar Tree Stores Inc., in an interview.

Dollar Tree also has very little product coming through the Southern California ports, he added. Company imports also transit the ports of Savannah, Norfolk, Newark, Houston and Oakland.

Dollar Tree's DC in Marietta, Okla., is the only inland center to which the company doesn't transload. Most of the containers that arrive there are trucked from the Port of Houston, White said.

Transload. Transloading is not a new concept in the logistics business, but this freight transportation niche has quickly become more popular for importers during the last couple of years, according to logistics practitioners and other industry officials.

"Dollar Tree is doing more and more of it as we grow different regions of the country," White said.

In a transload situation, goods are transferred from an ocean container to a domestic intermodal container near the port of entry instead of the typical intermodal arrangement in which the ocean container is directly placed on the rail or truck chassis for shipment to the interior of the country.

The trend toward transloading began as a reaction to the container shortage that grew out of the double-digit increases in import volumes from China at the same time that high steel prices crimped the production of new boxes. Ocean carriers are also deploying bigger vessels for transpacific service and need to keep them filled up. Vessel operators are shortening the amount of free time customers are allowed to retain custody of a container and offering other incentives to prevent boxes from going inland so they can put them back in circulation as quickly as possible for the next overseas load.

Conventional wisdom says the extra handling associated with transferring freight from one box to another just adds unnecessary cost to the system. But new dynamics have changed the equation.

"We wanted to put the DC where it made the most sense for our regional growth, and for the entire network it made sense for us to be further south in the Northwest."

Steve White
chief logistics officer, Dollar Tree Stores Inc.

Retailers like Dollar Tree — which incredibly has not raised prices during 18 years of business in part because of its relentless focus on driving cost out of its supply chain — have realized they can generate more in transportation savings than it costs them in labor to restuff the containers.

One ocean container fills 70 percent of a 53-foot domestic intermodal container. The 30 percent gain in cubic capacity means importers can move the same amount of goods to inland destinations while paying for fewer boxes. A shipper, for example, might hypothetically pay $10,000 to move 10 containers ($1,000 per 40-foot container), but if he repacks the shipment into seven 53-foot containers at a rate of $1,100 per container the total cost goes down to $7,700. Sometimes logistics handlers can fit 10 ocean containers into six domestic containers, in which case the cost would drop to $6,600 in this scenario.

"We have to make sure we do some nice forecasting of light and heavy merchandise so we can max out the 53-foot trailer" before exceeding weight limits, White said.

"The cost model works, relatively speaking, when ocean rates are high and competitive, people want containers to get back as quickly as possible, and rail rates are not as high," Kaufman said. "If rail rates went up and shipping rates went down, people would get out of transloading, but I don't see that happening any time soon." Others say an importer also needs to have significant volume moving through a facility to make it worthwhile.

In addition to savings in transportation, logistics chiefs say they are increasingly turning to transloading because it helps their relationship with carriers, and allows them to better control their flow of inventory.

Logistics personnel can stage containers at the local distribution center in Portland, stagger the shipments so that the inland distribution center isn't overwhelmed with cargo and allocate them between inland warehouse hubs based on the latest sales information.

Transloading also costs less in Portland than in Southern California, where labor and land are more expensive, Hanjin's McEwen said.

"And frankly, an account like a Fred Meyer, it's a big fish in a small pond vs. L.A. so we take good care of them," he added.

Kroger gets extra bang for its transload buck because it also piggybacks on Fred Meyer's domestic transportation network to cut its rail costs. Fred Meyer purchases apparel and other products from domestic manufacturers across the country, and relies on intermodal rail service to deliver those goods from long distance points such as North Carolina and elsewhere east of Denver.

Fred Meyer, which uses Pacer Stacktrain to manage its intermodal rail transport, fills the empty rail containers with Kroger products for the return trip back East. Railroads often have to reposition empty containers out West because there is an imbalance in transcontinental trade and transportation flows due to the demand to move Asian imports to the Midwest and East. By providing railroads with revenue-generating backhauls to the West Fred Meyer gets better rates for its intermodal transportation.

"In effect we are providing our own pool of empty rail containers," Kaufman said.

Dredging The Columbia. Port officials, farmers and manufacturers are pointing to a big milestone this summer they believe will make Portland more attractive to carriers. That's when the Army Corps of Engineers is expected to begin work on a $150 million Columbia River dredging project to increase the depth of the river from 40 to 43 feet. But others think the project, which is 15 years in the making, is too little too late.

Congress has appropriated $19 million for the project during the past four years, including another $9 million in December that should be sufficient for the Corps to begin issuing contracts. Washington and Oregon will split another $55.4 million in funding.

Work will start on the lower 15 miles of the river near the ocean and the upper 10 miles near Portland and Vancouver, according to the Army Corps. Dredging will target certain pockets since almost half of the channel is at least 43 feet already. The Corps said it anticipates completing about 25 miles of the channel to the new depth by the end of the year.

With environmental approvals now in hand, state leaders from Idaho, Montana, Oregon and Washington recently requested the White House include another $40 million for the project in the fiscal 2006 budget. Dave Hunt, executive director of the Columbia River Channel Coalition said the project needs $40 million in each of the next two years to stay on track.

A 43-foot channel will give carriers the flexibility to add about 500 extra loaded containers to vessels that are currently underutilized, according to the port.

"In effect we are providing our own pool of empty containers."

Calvin Kaufman
vice president of logistics, Fred Meyer Stores Inc.

Those extra containers "can make a big difference to the carrier's bottom line, shipping rates through Portland, and even in an ocean carrier's decision to offer service," Ruda said in the July issue of the port's *Dock Talk* newsletter.

Hanjin cited progress on the dredging project, the port's investment in a new post-Panamax crane and berth improvements as factors influencing its decision to expand container service in Portland.

Hayden Swofford, administrator for the Pacific Northwest Asia Shippers Association, said the new channel depth is virtually obsolete before digging even begins. Environmental impact studies, lawsuits and funding troubles have dragged out the project for 15 years since it was proposed.

"Three feet seemed like a great deal back then. Now they need eight," Swofford said, referring to today's new mega-ships with 45 to 48-foot drafts.

The PNASA's members come from the lumber and forest products industries.

Wooing The Shipper. The port is pursuing several strategies to win new liner service and attract importers, including hiring last March the Southwest region operations manager for vessel operator Hapag-Lloyd (who also has nine years experience as Hanjin's intermodal manager for North America), as general manager of liner development, pushing for more state investment in rail infrastructure and developing land for distribution centers (see related story).

While port officials are banking on freight breakdowns in other parts of the country, the river channel deepening project and other infrastructure improvements to attract carriers, there is a growing realization that more must be done to attract importers who could create the underlying customer base that interests carriers.

"You've got to show the carrier that there is cargo," said Peter Friedmann, executive director of the Agriculture Ocean Transportation Coalition and a trade lawyer who also represents the port, the Columbia River Shippers Association and the Pacific Coast Council of Customs Brokers and Freight Forwarders Associations.

Rail makes a connection

Port officials and users interviewed for this story said Portland's strong suits as a distribution hub include good rail and interstate highway connections, intermodal facilities, and a barge feeder system that supports agriculture producers and other businesses up the Columbia River. Interstate 5, the major north/south West Coast highway, goes through Portland and the port has spurs connecting to the Union Pacific (UP) and Burlington Northern Santa Fe (BNSF) main lines that go to the Midwest.

Despite the good connections, rail service in the Pacific Northwest and elsewhere around the country, deteriorated last year when railroads lacked the manpower, equipment and track to handle the surge of import cargo, coal and wheat shipments. The Portland area, which is a major interchange for north/south and east/west rail corridors, is already at maximum capacity as freight and intercity passenger rail services expand.

Bottlenecks occur because single tracks connect most of the junctions, forcing trains to queue for clearance; yard capacity is inadequate, forcing trains to wait on mainline tracks; and local traffic moving in and out of the port and railroad terminals competes for space with long-distance trains moving through the area.

Portland is nearly twice as congested as Chicago even though it handles less than one-fifth the trains as the nation's largest rail hub, according to a March 2004 study by Cambridge Systematics for the port. The consulting group found that trains averaged 12.3 mph and experienced about 41 minutes of delay per train compared to Chicago, where 3,500 freight and passenger trains average 12.5 mph. With about 600 trains per day in its system, Portland experienced nearly half the total delay hours (402) of Chicago (813) in a typical four-day period.

BNSF and UP each operate about 36 trains per day along the Portland-Seattle corridor. As congestion worsens, the BNSF could opt to route more trains from Seattle-Tacoma directly to Chicago instead of through Portland, Cambridge Systematics warned. That would mean less frequent and less competitive rail service for shippers in Portland and could impact the marine business if importers and exporters shy away from the port.

In Portland's favor, however, is the fact the BNSF trains traveling east from Seattle need extra locomotives to help them climb the Cascade Mountains range and then travel through a seven-mile long, single-track tunnel at the height of the pass. The number of trains using the tunnel is limited to 32 per day to allow for venting of exhaust gases from the tunnel. The tunnel, and one on a parallel line, cannot accommodate double-stack container cars.

The Columbia Gorge Corridor, the main route to the Midwest, is relatively congestion-free once beyond Portland, but it will be difficult to add rail lines to meet potential future demand because the lines are located in environmentally sensitive areas, the study noted. UP operates a line on the Oregon side of the river and the BNSF line runs on the Washington (north) side. Some have suggested the companies could expand capacity by cooperating to run one-way trains on each other's tracks.

If proposals to tear down dams along the Columbia River to help replenish salmon stocks are ever carried out, or water levels

The Columbia River Shippers Association, which pools the collective buying power of its members to negotiate better contracts with carriers, is stepping up its efforts to find shippers willing to commit cargo to vessels that will serve the river with direct calls, and will try to introduce carriers to individual importers, Friedmann said.

The difficulty in trying to aggregate enough cargo to support a carrier is determining when critical mass has been reached, Friedmann said. "That's the $64,000 question."

Despite the success of Kroger-Fred Meyer and Dollar Tree transiting through Portland, local shippers are concerned that they will remain in a precarious position, or have their ability to increase trade volumes and delivery speed stunted, unless other carriers besides Hanjin decide to call on the port.

Fred Meyer would prefer more carriers serve the port so it can resume the twice-per-week freight service it enjoyed before "K" Line pulled out, Kaufman said.

And without competition, carriers who call the Puget Sound ports are less likely to subsidize surface transportation to Portland to attract far away customers in the Portland area.

"If vessel service in the river declines, the incentive for carriers to equalize the rates diminishes and that means an additional cost to the shipper of taking delivery in Portland," Friedmann said.

> ***"Portland has always been more export minded, but imports pay the bills."***
>
> **Hayden Swofford**
> *administrator, Pacific Northwest Asia Shippers Association*

Airport Redux? In the hunt for shipper commitments, the city and the port have the advantage of drawing on their parallel experience attracting international air carriers to the city. After the city lost all non-stop international passenger service to Asia and Europe in 2000 when Delta pulled out, businesses in the region came together and created a "travel bank" in which they committed to buy a predetermined number of seats each month from carriers that brought in service.

That was enough of an incentive to attract three international air carriers to Portland International Airport. The city now enjoys direct service to Frankfurt, Germany, via Lufthansa; Guadalajara, Mexico, on Mexicana; and, most recently, Tokyo on Northwest Airlines.

In the case of Lufthansa, the "travel bank" collected $10 million in initial ticket commitments to use Lufthansa, said Rick Finn, the port's federal affairs manager. Most of the commitments came from large businesses in the Oregon-Washington area, he said.

"That may present a model for how we are going to increase imports," Hunt said.

The port, which also owns the airport, is now putting together a Columbia River Container Service Committee — a team of shippers, transportation providers and local officials with a stake in container service — along the lines of its International Air Service Committee. That committee was useful in organizing the community, keeping them informed and mobilizing certain members to help the port actively market to airlines or lobby for state government support in the campaign. Finn said the port hopes to soon round up leadership for the committee, contact potential members and hold an organizational meeting in January or February.

Loyal Opposition. Despite the programs underway, some local business leaders remain unconvinced the port is doing enough to change the import equation. They say the port is continuing the mistake of targeting

drop due to natural causes, barge capacity would be reduced on the river, shifting a lot of grain traffic to rail. A large increase in grain train traffic could "significantly disrupt" intermodal and other traffic, according to the study.

"This would stress the capacity of the Columbia Gorge rail corridor, force grain transportation prices up, and make Northwest grain producers less competitive in global markets," Cambridge Systematics predicted.

Many of the rail yards in the Portland area need upgrading to support modern equipment and longer unit trains.

"Over time, congestion at the core of the Portland rail network will erode the marine terminals' major asset — the perception among shippers, brokers, and carriers that freight transportation through the Portland gateway is relatively less congested and more manageable than other West Coast port cities," the study said. "This will make the Los Angeles-Long Beach gateway and East Coast ports look relatively better. In the worst case, Portland could lose market share, especially in the niche markets that it holds today."

The port is organizing a public-private financing effort to identify rail infrastructure investments the state can make to address the need for mainline capacity and access to California and the Midwest. The Oregon Rail Users League — which includes freight, passenger, long-haul and short-line railroads, unions, Amtrak, passenger rail associations, shippers and other groups — is seeking legislative support for double tracks, sidings, tunnel expansions, raised grade crossings and other projects. Gov. Ted Kulongoski's 2005 budget, unveiled in December, includes a $100 million multimodal transportation package largely devoted to railroad, and some marine, improvements. The group also hopes to get $9 million from the multiyear highway bill, stalled in Congress, for an intermodal rail yard.

"There has clearly been a lack of rail investment, at least on the Oregon side of the river," said Dave Hunt, executive director of the Columbia River Channel Coalition. During the last biennium Oregon invested $10 million in rail projects compared to $295 million for the state of Washington.

"The loss of container service has created an opportunity and impetus for cooperation and coordination" between the port, ocean carriers and the railroads, Hunt said.

The port recently acquired a piece of property in nearby Troutdale with the long-term view towards creating a Columbia Intermodal Corridor. The project would involve building a yard to hold trains outside the terminal, thereby making switching easier and allowing better access, and double-tracking the existing UP line between the port and the yard.

The port hopes money will be available in the federal highway bill to also support another rail yard so the port can switch its automotive facilities there. That would take the pressure off the infrastructure at the T-6 terminal and free it up for intermodal growth, said Carl Warren, director of business development.

With an annual rail capacity of about 220,000 TEUs, the port has plenty of capacity to handle current volumes, he said. "This is preparing us for future incremental growth if we can make the pieces work. We have the luxury of not playing catch up with our infrastructure. So that should be a compelling advantage for shippers thinking about bringing import business through Portland," Warren said.

Another advantage cited by Warren is the availability of 500 to 1,000 ready-to-build acres of industrial land within five miles of the port where shippers could locate distribution centers.

its marketing efforts toward carriers instead of importers and betting on a deeper channel to solve its problems. Another criticism leveled at the port is that it has focused on promoting exports at the expense of imports even after the disparity between the two types of rates widened.

"Portland has always been more export minded, but imports pay the bills," Swofford said.

"They like to market to headquarters of carriers. We say you don't need to do that. You put 40,000 containers on the dock and you'll have carriers running into each other to try and get them," said Robert Coleman, president and founder of Portland-based Total Logistics Resource Inc.

"The director of the port (Bill Wyatt) has done an absolutely phenomenal job at the airport attracting international carriers. I give him an 'A,'" Coleman said. "As far as the marine operations go, I'd give him a flat 'F.' "

Port officials respond that they have long worked to gain shipper commitments. They point out that the port helped set up the Columbia River Shippers Association 20 years ago, but critics say the group's influence has waned, and that it has failed to attract the large importers who would really make a difference.

Coleman, echoing a similar argument made before by Friedman, said Portland needs to follow the model of the Massachusetts Port Authority, which drafted the governor to lobby companies located in the Boston area to dedicate a certain amount of cargo the port.

"The only way it is going to work is to get CEOs of 10 or 15 major companies to mandate down to their logistics management that they need to dedicate a certain amount of cargo to the port, and the port should create incentives to make them want to use the port," Coleman said. "Logistics managers aren't going to do it because it's stealing their thunder — they get noticed for the deals they can negotiate with carriers. If the CEO said, 'Dedicate 5 percent to the shippers association,' it would really take off.

"The shippers association would go from a very small peanut to a very large coconut," Coleman said.

"I don't think the Port of Portland has marketed any differently than other ports. The notion of reaching out to shippers is relatively newer for ports nationwide, but Portland has been engaged in that for a number of years," Friedmann said.

But Coleman, a past president and chairman of the Pacific Coast Council of Customs Brokers and Freight Forwarders Associations and past president of the Columbia Rivers Customs Brokers and Forwarders Association, assailed port officials for not taking the lead on import matters.

"I don't think they have a plan. They say they are open to any ideas, but these are highly compensated executives. They should have their own ideas" instead of "sitting back," a frustrated Coleman told *American Shipper.* "They just woke up and realized that there is a congestion issue on the West Coast" that Portland could benefit from, he added.

Port officials "now realize" it is going to take a more focused effort to attract major shippers, spokesman Hedaa acknowledged.

"Portland's problems are more profound than just channel depths," Swofford said. "They have never taken advantage of things that can help carriers."

"They like to market to headquarters of carriers. We say you don't need to do that. You put 40,000 containers on the dock and you'll have carriers running into each other to try to get them."

Robert Coleman
president and founder, Total Logistics Resources Inc.

Swofford and Coleman said Portland has been less aggressive since the 1970s than the Seattle and Tacoma ports in enticing importers and carriers to use its container services.

"The Port of Seattle grabbed onto the concept of containers like a Democrat grabs onto tax increases," Coleman said in an Oct. 26 commentary published in the local *Daily Shipping News.*

One of the missing components for Portland has been a strong intermodal program, according to Swofford. He said port officials haven't worked closely with railroads, in the same way Seattle and Tacoma did, to come up with programs that make it easier to move cargo to the Midwest and East. It takes about the same amount of time for a carrier to make its way up the coast and through Puget Sound as it does to steam up the Columbia River, and shippers have a shorter rail haul out of Portland because much of the intermodal freight from Seattle-Tacoma moves south and right by Portland on its way east. Hayden argued that the port has never taken advantage of those strengths in ways that can help carriers.

"There is no set up and no infrastructure to work against, so carriers go where it is easier," he said, suggesting that the UP only runs generic trains since there is no incentive to run dedicated intermodal or commodity unit trains.

In fact, less than 0.5 percent of container tonnage at the port was moved inland by rail, Cambridge Systematics said.

If intermodal connections were more efficient "I feel they'd have a much stronger likelihood of gaining carrier support for calling there," Swofford said.

A couple of intermodal improvements already are on the drawing board. Marine Director Ruda said the port likely will turn in the first quarter to third party switching for its on-dock rail to increase the velocity of rail car movements through Terminal 6. Rather than have UP and BNSF independently switch trains on and off the main line, a neutral operator can operate assets on behalf of both railroads, making it easier for the railroads to disconnect locomotives and use them elsewhere instead of idling until open track becomes available in the port. The port is also scheduled this summer to build an extra rail lane alongside two existing sections of track in the terminal, Hedaa said.

Coleman said Seattle and Tacoma have subsidized programs to attract cargo, including sponsoring a pool of rail cars back in the 1970s to reduce the cost of empty rail car returns from the Midwest, and has continued to invest in those that have proven popular with importers and exporters.

Portland needs to subsidize programs for shippers and promote its stacktrain advantage over Seattle if it is going to be successful, he said.

Coleman said port officials are content to remain a niche port and have used the river problems as an excuse not to take bolder steps to become import oriented.

"I guess that makes us the little port that can't," he said in the commentary.

"While they've sat by while Rome was burning, these carriers have invested in Tacoma," Coleman elaborated in an interview. Portland needs to partner with large global terminal operators with overseas ties or vessel operations that have a vested interested in bringing vessel business to their own facilities, like "K" Line is doing in Tacoma, he said.

At a vessel service summit in late August, Coleman asked state and port officials to consider Astoria, a bulk port at the mouth of the Columbia River, as the primary ocean container facility for the region. Under his proposal, vessels would dock at an anchorage basin built in the middle of the river and discharge containers onto barges to feed Portland, Vancouver, Longview and other ports up the river. Those ports would continue to directly receive bulk, breakbulk and roll-on/roll-off auto carriers.

Loading vessels at anchor from barges is a common practice at major foreign ports such as Hong Kong and Rotterdam. Coleman suggested the system could use coupled tug-barge units that can push loads upwards of 1,000 containers in coastwise or river operations.

Building a world-class container facility at the mouth of the Columbia River would eliminate river transit time and the cost of an extra pilot for ocean carriers, Coleman said. That would make the Columbia River ports more competitive and might even siphon off carriers from Seattle and Tacoma.

Coleman, citing numbers presented by Hanjin's McEwen at the vessel summit, said pilot costs for Portland are $22,500 per trip compared to $15,000 for Seattle and $6,000 for Vancouver, British Columbia. He speculated that 60 to 70 percent of Portland pilot fees cover the river pilot.

Carriers could save an additional $40,000 because it can easily cost that much to operate a container ship per day, which is equivalent to the roundtrip steaming time for Portland and the Puget Sound ports.

Large terminal operators like Hutchinson Port Holdings have experience building and operating barge terminals.

"We need to look at the entire Columbia River, not just the Port of Portland or the Port of Vancouver. Let's create a Columbia River commission and look at this from an end-to-end, tri-state perspective," Coleman said.

Improvements to the port must be part of a broader development effort if the city is to be successful in luring importers to set up warehouses in the area, added Chris Mergenthaler, president of George S. Bush & Co. and the Columbia River Customs Brokers and Forwarders Association.

"Unfortunately, Portland itself is not as business friendly as it needs to be," he said, citing high taxes and local government reluctance to provide relocation incentives.

The overall marketing plan should include tax deferral or exemption programs to allow businesses to gain a foothold in the area, Mergenthaler recommended.

"If we can get a deeper channel and a higher commitment to bring import cargo through Portland we will be a very attractive marketplace," Hunt said.

"I think Portland is going to do fine. It's just a short-term, temporary setback. It's just a matter of time before somebody comes back and fills the void left by the pullout" of Hyundai and "K" Line, concurred Dollar Tree's White. ■

Bonner suggests cap on CSI ports

WASHINGTON

The United States will need to expand the Container Security Initiative, an over-the-horizon cargo inspection program, to about 20 more international ports in order to maximize the ability t interdict any terrorists or weapons of mass destruction hidden in a U.S.-bound sea container, the man in charge of protecting the nation's borders said.

Robert Bonner, commissioner of U.S. Customs and Border Protection, said 95 percent of U.S. cargo imports would be covered by some sort of pre-inspection capability with about 53 ports participating in the program.

There are 34 world ports in which small teams of CBP officers are stationed. U.S. personnel, using targeting scores based on advance shipping data, identify high-risk shipments for domestic customs authorities to X-ray or search for terrorists, contraband and weapons.

Bonner's comments are one of the first indications CBP has identified a limit to how many ports should participate in CSI. He spoke Dec. 21 at the Department of Homeland Security's "summit" on cargo security at Georgetown University in which industry representatives were invited to give feedback on the progress of CSI and other supply chain security programs.

Bonner reiterated his top goals for securing international cargo are to develop a sensored container that can provide tampering alerts (the smart box); strengthen requirements and benefits for companies participating in the Customs-Trade Partnership Against Terrorism trusted shipper program; collect more detailed data on commercial transactions between importers and manufacturers before shipments arrive at a foreign port; develop a contingency plan for restarting trade in the event of a terrorist attack using a container or involving a port; complete the Automated Commercial Environment and the International Trade Data System to serve as a single portal for government agencies to share trade data; and convince other countries to adopt CSI and other U.S. pre-export safeguards as the international standard.

The French port of Marseilles became the 34th world port to begin joint inspections with U.S. officers under CSI in early January. The program has been operational at the French port of La Havre for two years. ■

Evergreen, OOCL, Hutchison invest in Ningbo

NINGBO, China

The Taiwanese Evergreen group Orient Overseas Container Line and the Hong Kong-based Hutchison Whampoa group, parent of Hutchison Port Holdings, are investing in the development of container terminals in the deepwater port of Ningbo, China.

The most noteworthy development is the investment of Evergreen, a Taiwanese group, in mainland China. The Ninbgo investment will be its first marine terminal investment on the mainland, but will be channeled through its Italian subsidiary Lloyd Triestino.

A spokesman for Evergreen in London said Lloyd Triestino (Hong Kong), an Evergreen affiliate, has signed a contract with the port of Ningbo for developing two container berths in the deepwater Beilun area of the port. Reuters reported Evergreen's investment as $125 million.

Located south of Shanghai, Ningbo is a natural deepwater port that aims to become a major deep-draft container port for the Yangtze Delta and its hinterland. The port of Shanghai, China's largest, is restricted by draft limits for large containerships.

OOCL also said it has signed a letter of intent to jointly invest with the Ningbo Port Group and others in the development of a five-berth container terminal at Beilun.

"Involving a total waterfront of 1,650 meters (5,400 feet) with a draft of 17 meters (56 feet), OOCL will take a 20 percent stake in the project which will involve a total investment of up to $650 million," the carrier said.

Hutchison will invest in a separate $150 million project to expand Ningbo, Reuters said. ■

Singapore closes traffic gap with Hong Kong

SINGAPORE

The port of Singapore closed the gap in container traffic with Hong Kong in 2004, preliminary statistics from the Hong Kong marine department confirmed.

Last year, Singapore handled 20.6 million TEUs, as compared to Hong Kong's 21.9 million TEUs, which remained the world's-largest container port But Singapore's traffic increased 14.1 percent last year, faster than Hong Kong's 7 percent annual rise. This means Hong Kong's traffic lead over Singapore narrowed from 2.4 million TEUs in 2003 to 1.1 million TEUs in 2004.

If the ports maintain these growth rates this year, Singapore will again overtake Hong Kong as the world's top container port after several years as second largest. ■

Robert Mottley

'Through transport' immune from antitrust

This case arose out of allegations of antitrust price-fixing the U.S. government brought against two companies in the business of shipping household goods of U.S. military personnel from homes in Europe to foreign ports: Gosselin World Wide Moving N.V., based in Antwerp, Belgium, and The Pasha Group, based in Corte Madera, Calif.

In February 2004 the United States filed a "criminal information," charging Gosselin and Pasha with alleged conspiracy to restrain trade in violation of Title 15, U.S. Code, Section 1, and alleged conspiracy to defraud the United States in violation of Title 18, U.S. Code, Section 371. The defendants entered into a plea agreement, conditioned upon the outcome of a federal court ruling on the government's charges.

Gosselin subsequently asked U.S. District Judge Gerald Bruce Lee, sitting in Alexandria, Va., to dismiss the government's criminal information on grounds the United States had failed to state an offense. Pasha also asked for a dismissal.

In his ruling, Lee explained the context of the alleged price-fixing conspiracy, which concerned the International Through Government Bill of Lading (ITGBL) program. The U.S. Defense Department pays for this program, which transports military and civilian household goods to and from foreign countries. The program is administered by the Military Traffic Management Command (MTMC), which solicits bids from U.S. freight forwarders, also called carriers, which then subcontract with other service providers for each component of the transportation. The subcontracted providers include local and foreign moving and storage companies, foreign port agents, steamship lines, U.S. port agents, and U.S. moving and storage companies.

In the solicitation process, freight forwarders obtain rate commitments from the service providers for each of the components, add their own markup, and combine those bids into what is called a "through rate." In putting together their through rates, U.S. freight forwarders must consider the costs for each of those services, plus the costs of a booking agent to monitor shipments, physical inputs — such as lift vans and warehouses — and finally, overhead and profit. The through rate is then submitted to MTMC, which twice a year conducts a two-step bidding process for six-month cycles. In the first step, or "initial filing," U.S. freight forwarders file their through rates in each route, called a "channel." The lowest bidder in the initial filing sets what is called the "prime rate." The carrier that sets the prime rate for a channel is guaranteed a predetermined percentage of the shipments for that particular channel. A carrier may instead file an "administrative high" rate to indicate its intent not to file competitively at the initial filing stage, while reserving the right to file again at the second stage, known as the "me-too" stage.

After the initial bidding, MTMC publishes a list of the lowest five bids received for each channel. During the "me-too" bidding period, carriers that did not set the prime rate may match or "me-too" the lowest rate and receive a guaranteed fraction of the shipments moved on that particular channel. Alternatively, carriers can file a rate higher than the low rate. However, MTMC will ship household goods using carriers with higher filed rates only after all carriers with lower rates on file exhaust their capacity.

"Gosselin and Pasha have two roles with the International Through Government Bill of Lading program," Lee noted. Both act as exclusive co-agents of a group of freight forwarders called the International Shippers' Association (ISA). Pasha and Gosselin negotiate a "service contract" on behalf of ISA with the Trans Atlantic American Flag Line Operators (TAAFLO), an immunized conference of U.S. ocean common carriers. ISA members receive discounted ocean rates from the conference in exchange for committing to ship a specified volume of cargo over a set period of time. Pasha and Gosselin, which receive a set commission fee, also act as general booking agents for many of their customers. In that capacity, they bill carriers a "landed rate" that combines the rate fixed by the ISA-TAAFLO service contract for ocean transportation and a rate for foreign inland service.

The government alleged that on certain routes from Germany to the United States in 2002, Gosselin and Pasha "obtained the agreement of most … U.S. freight forwarders not to 'me-too' the prime through rates in those channels, but instead to file 'me-too' rates at or above the second-low level. The defendants also supplied misleading information to DOD personnel in Germany to ensure that the DOD did not tender any shipments to a freight forwarder with a 'me-too' rate on file below the second-low level." As a result, the government claimed the Defense Department overpaid for the transportation of military household goods by approximately $1 million during the summer of 2002.

The defendants argued their actions were a direct consequence of local German agents agreeing to fix the terms and conditions for land carriage in Germany to U.S. carriers. Gosselin and Pasha contended they had a duty to inform their ITGBL carrier customers of the German agents' actions. The United States argued that the defendants' conduct "raises a perverse escape valve for many antitrust violators doing business overseas that Congress could not have intended."

Lee wrote in his opinion that the German agents' actions "were outside the factual record and this court cannot consider them in its analysis." However, he went on to rule that "the Shipping Act gives antitrust immunity" to Gosselin and Pasha through the "plain meaning" of Section 1706 (a) (4): "The antitrust laws do not apply to … (4) any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade."

Lee also cited the Federal Maritime Commission's rules that exempt used military household goods transported by ocean transportation intermediaries from publishing a tariff. "The court finds that the defendants acted in good faith in considering their actions immune from the antitrust law," he ruled.

Yet Lee also upheld the government's right to prosecute Gosselin and Pasha for fraud. "The court has held that the defendants' conduct enjoys antitrust immunity under the Sherman Act. However … Congress has provided that the government can prosecute both the Sherman Act count and the fraud count cumulatively. The fact that the court has found defendants' conduct under the Sherman Act immune is irrelevant. The government must, under the fraud count, prove that defendants defrauded the United States," Lee concluded. He dismissed Gosselin and Pasha's argument that conduct immune under one law cannot properly serve as the basis of a legal violation under another statute. The federal court's decision has been appealed.

[USA v. Gosselin World Wide Moving N.V. and The Pasha Group; U.S. District Court for the Eastern District of Virginia, Alexandria Division; Docket no.1:03cr551 (GBL); Date of ruling: Aug. 16]

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Logistics

Maersk Logistics

A.P. Moller-Maersk has promoted Henrik Ramskov from senior director to vice president of Maersk Logistics.

Panalpina

The Foster City, Calif.-based company has promoted Jay Bellin to vice president of professional services and compliance for North America. Bellin was vice president of sales for Panalpina North America.

Starbucks Coffee Co.

Dorothy Kim has been promoted to executive vice president supply chain and coffee. She was senior vice president, global logistics and procurement.

Kim succeeds E.R. "Ted" Garcia, who retired after 10 years with the Seattle-based company.

Integrators

DHL

German postal and logistics giant Deutsche Post has promoted Scott Price to chief executive officer of DHL Express in the Asia-Pacific, and named Alison M. Brink vice president, marketing strategy, for DHL Americas.

Price, formerly president of DHL Express in Japana, succeeds John Mullen, who has joined the management board of Deutsche Post as CEO of DHL Express Americas, Asia-Pacific and Emerging Markets.

Brink was head of global marketing communications for DHL, based in Brussels, Belgium.

UPS

The Atlanta-based package delivery and supply chain services provider has named Dave Barnes chief information officer and senior vice president. He succeeds Ken Lacy, who retired.

Barnes was vice president of customer and operations application portfolios in the information services division. In his new position, he joins UPS's management committee, which directs the company's day-to-day affairs.

Maritime

CP Ships Ltd.

The container shipping container has appointed John Baker senior vice president, general counsel and secretary.

Baker was senior vice president and general counsel for Air Canada.

Crowley Maritime Corp.

The Oakland, Calif-based company has switched the positions of two of its longtime senior logistics and liner shipping executives.

Rinus Schepen becomes senior vice president and general manager of Crowley Logistics while John Hourihan takes over Schepen's role as senior vice president and general manager of Crowley Liner Services' Latin America group.

Schepen joined Crowley in 1987 and took control of the Central America liner shipping operations in 1991. Hourihan also joined Crowley in 1987 and has managed Crowley Logistics since its inception in 1998.

Crowley Liner Services and Crowley Logistics are both based in Jacksonville, Fla.

Evergreen

Group founder Yung-Fa Chang has left the day-to-day responsibilities of managing the group to a team of executives including his sons Kuo-Cheng "K.C." Chang and Kuo-Wei "K.W." Chang, the Taiwanese company said in a statement.

Y.F. Chang has not retired as group chairman of Evergreen, but will "continue to weigh in on major issues within Evergreen group."

Evergreen said K.W. Chang, the youngest son of Y.F. Chang, has been promoted to president of EVA Airways, the group's airline. He succeeds Steve Lin, who was promoted to chairman of EVA Airways.

K.C. Chang stepped down as chairman of EVA Airways, continues to be a vice chairman of the Evergreen group, a position just below Y.F. Chang, as well as chairman of Evergreen Marine Corp. (Taiwan).

Four vice chairmen share overall management responsibilities: K.C. Chang, in charge of marine-related businesses; Kuo oversees the marine business in the Americas; Sun-San "S.S." Lin oversees the marine and international hotel chain business; and Chin-Chuang "C.C." Cheng is responsible for aviation and energy development.

Kawasaki Kisen Kaisha

Hiroyuki Maekawa will succeed Yasuhide Sakinaga as group president of "K" Line, effective April 1.

Maekawa, a career "K" Line executive, is a senior managing director of the Japanese shipping group.

Sakinaga will be named chairman.

Maersk Inc.

Stephen Fraser, vice president of information systems at CP Ships for 10 years, is leaving the company to join Madison, N.J.-based Maersk Inc., the U.S. arm of the A.P. Moller-Maersk group.

Fraser will be vice president and chief information officer starting in mid-March.

Inland

Kansas City Southern

KCS, the rail transportation holding company, said industry veteran Arthur L. Shoener will take responsibility for its U.S.-based rail holdings.

Shoener becomes KCS's executive vice president and chief operating officer as well as president and chief executive officer of both its U.S. rail holding companies, Kansas City Southern Railway Co. and Texas Mexican Railway (Tex-Mex).

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TACA reduces bunker adjustment factor

The Trans-Atlantic Conference Agreement of ocean carriers have reduced their bunker adjustment charges.

For freight moving to and from U.S. Atlantic and Gulf Coast ports, the fuel charge has dropped to $161 from $210 per 20-foot container, and to $322 from $420 per 40 or 45-foot container. For cargo moving to and from U.S. West Coast ports the charge dropped to $242 from $315 per 20-foot container and $484 from $630 per 40 or 45-foot container.

The currency adjustment factor increased to 9 percent from 7 percent to at least until Feb. 15, TACA said.

TACA members are Maersk Sealand, Atlantic Container Line, Hapag-Lloyd Container Line, Mediterranean Shipping Co., NYK Line, Orient Overseas Container Line and P&O Nedlloyd.

Wallenius Wilhelmsen boosts RTW link

Wallenius Wilhelmsen Lines said it will raise the frequency of its roll-on/roll-off "round-the-world" service via the Panama Canal in March from 24 to 36 sailings a year.

The service, which carries mainly high and heavy cargoes, calls at ports in Europe, the United States, Panama, Oceania and Asia.

The Scandinavian shipping line said its revised schedule will increase ro/ro capacity in the trades from Europe and North America to Oceania, from Europe to North America, from Asia to North America and from Asia to Europe (via Panama).

Frequency between sailings will improve to 10 days from 15, and some transit times reduced. When the schedule changes takes effect, Wallenius Wilhelmsen will operate the round-the-world service with a rotation of 110 days, shaving 10 days off the existing schedule.

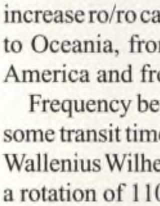
Vessels will regularly call at Manzanillo, at the Caribbean end of the Panama Canal, providing options in reaching other destinations in the company's global route network.

In the Asia-to-North America segment, the shipping line said it will call at Singapore, Pyon Taek/Masan, Kobe, Nagoya, Yokohama, Long Beach, Manzanillo (Panama), Savannah, Norfolk, Baltimore and New York.

In the Asia-to-Europe segment, it will provide connections between Kobe, Nagoya, Yokohama, Zeebrugge, Bremerhaven and Southampton. This operation relies on the vessels' routing via the Panama Canal, rather than the standard itinerary via the Suez Canal.

Asia/Canada lines set peak season surcharges

Shipping lines of the Canada Transpacific Stabilization Agreement have agreed to implement their existing $400 peak season surcharge again in 2005, effective from June 15 to Nov. 30.



Member carriers say they anticipate at least a 10-12 percent increase in North American import cargo from Asia in 2005.

Members of the agreement are APL, COSCO Container Lines, Evergreen, Hanjin Shipping, Hapag-Lloyd, Hyundai Merchant Marine, "K" Line, Lykes Lines, MOL, NYK Line, OOCL and P&O Nedlloyd.

Lloyd Triestino, Zim choose Wilmington

Lloyd Triestino and Zim Integrated Shipping Services have started calling at Wilmington, N.C. instead of Norfolk, Va. on their joint weekly all-water Asia/U.S. East Coast Asia USA Express service.

The move to Wilmington "was made in response to customers requirements and the concentration of major distribution centers in North Carolina," said Zim in a statement.

The AUX service uses nine ships averaging 2,812 TEUs and has a revised port rotation of Shanghai; Ningbo; Qingdao; Cristobal, Panama; Kingston, Jamaica; Port Everglades, Fla.; Savannah, Ga.; Wilmington, N.C.; Kingston; Cristobal; and back to Shanghai.

Lloyd Triestino's parent company Evergreen Marine, takes space on the "AUX" service between Asia and Panama.

Hatsu joins Asia/U.S. East Coast service

Hatsu Marine Ltd., a U.K.-based subsidiary of the Evergreen group, is joining the AUX Asia/U.S. East Coast all-water joint service of its sister companies Evergreen and Lloyd Triestino and of Zim Integrated Shipping Services.

This will be Hatsu's third weekly Asia/U.S. East Coast service.

The service calls at the ports of Shanghai, Ningbo, Qingdao, Cristobal (Panama), Kingston (Jamaica), Port Everglades, Savannah and Norfolk. In February, the AUX service will switch from the port of Norfolk to Wilmington, N.C.

CaroTrans adds Charleston/Tokyo link

CaroTrans International, a neutral non-vessel-operating common carrier, has added a weekly all-water, direct service for less-than-containerload cargo from Charleston, S.C., to Tokyo and Yokohama.

Transit time from Charleston to Tokyo and Yokohama is two days faster than the previous landbridge service, the company said.

Cargo destined for other Japanese ports will continue to be shipped via the landbridge to Los Angeles and then on to Japan.

Med/U.S. lines plan westbound rate hikes

The United States South Europe Conference is the latest transatlantic carrier group to announce a plan to raise westbound rates.

The three-carrier conference, which comprises Maersk Sealand, Hapag-Lloyd and P&O Nedlloyd, said it expects to implement a westbound tariff general rate increase program in three stages over April-October 2005.

The proposed rate increases, applicable to both dry and reefer containers, are: $400 per 20-foot container and $500 per 40- or 45-foot box, effective April 1; $160 per 20-foot container and $200 per 40- or 45-foot box, effective July 1; and a yet-to-be-determined increase, effective Oct. 1

The carrier group cited increased costs in many areas of operation as the background for the rate rises.

Hapag-Lloyd, NYK enter U.S. East Coast/Brazil

Hapag-Lloyd and NYK Line have started a joint service between the U.S. East Coast and the East Coast of South America, under a cooperative agreement filed with the U.S. Federal Maritime Commission.

Both carriers are new entrants in the U.S. East Coast and the East Coast of South America trade. In May, "K" Line also entered this increasingly crowded trade.

Hapag-Lloyd and NYK started their joint service from Brazil during the second half of January. Their first southbound sailing from New York is planned for Feb. 14. The fortnightly service uses three 1,100-TEU vessels that call at New York, Norfolk, Savannah, Miami, Kingston, Sao Francisco do Sul (Brazil), Santos (Brazil), Sepetiba (Brazil), Puerto Sucre (Venezuela) and New York.

NYK already provides container services from Asia and northern Europe to the East Coast of South America, while Hapag-Lloyd is in the northern Europe/East Coast of South America trade.

NYK calls its new South American operation the Atlantic North South service.

Central America lines add Honduras charge

Members lines of the Central America Discussion Agreement, a carrier agreement in the U.S./Central American trade, are implementing a Honduran port security charge for all cargo to and from Honduras, effective Feb. 10.

The security charges will be $1 per cubic meter or 1,000 kilos, with a minimum charge of $5 for breakbulk and less-than-containerload cargo; $10 per unit for all roll-on/roll-off cargo; and $20 per container or trailer.

Members of the carrier agreement are APL, Crowley Liner Services, Dole Ocean Cargo Express, Great White Fleet, Lykes Lines, Maersk Sealand and Seaboard Marine.

NYK, CSAV end Asia/Americas VSA

NYK Line and Compania Sud Americana de Vapores have ended their nine-year-old Asia Andes Express (Andex) vessel-sharing agreement to provide competing services between the Far East and the West coasts of Mexico and South America.

NYK said its will operate an independent Asia Latin Express (Alex) service, starting Jan. 26. The new weekly link will use 10 vessels, including four 2,200-TEU vessels currently in service and another six 1,600-TEU ships. The Alex service will have a rotation of Tokyo, Busan, Shanghai, Keelung, Hong Kong, Nagoya, Manzanillo (Mexico), Balboa, Buenaventura, Guayaquil, Callao, Iquique, San Antonio, Callao, Balboa, Manzanillo and Tokyo.

Details of the future service of Compania Sud Americana de Vapores in the same trade are not known.

NYK and Compania Sud Americana de Vapores will compete against new entrant Mediterranean Shipping Co., which has just started a 10-ship service calling at the ports of Hong Kong, Chiwan, Shanghai, Busan, Manzanillo (Mexico), Buenaventura, San Antonio and San Vicente, Manzanillo, Long Beach and Hong Kong.

Lines upgrade Mexico/U.S. Gulf/ECSA link

Alianca Navegacao e Logistica Ltda., its sister company Hamburg Sud and P&O Nedlloyd are adding a sixth ship and improving the sailing frequency to weekly on their joint service connecting Mexico, the U.S. Gulf and South America's East Coast.

From January, six vessels of about 1,200 TEUs will be deployed on the service. The service has used five ships averaging 1,959 TEUs. The revised port rotation is Veracruz, Mexico; Altamira, Mexico; Houston, Texas; Cartagena; Puerto Cabello; Salvador; Santos; Rio Grande; Itajai; Santos; Sepetiba; Salvador; Puerto Cabello; Cartagena; and back to Veracruz.

Europe/South America lines raise rates

Members of the European/South Pacific & Magellan Freight Conference, a carrier group in the Europe/West Coast of South America trade, said they will increase southbound freight rates 150 euros or $200 per 20-foot container, effective March 1.

The conference said it will increase rates further on June 1 and Oct. 1. The increases are due to "sharply rising system costs, especially charter hire," the conference said in a statement.

Member lines are CMA CGM, Compania Sud Americana de Vapores, Hamburg Sud, Hapag-Lloyd, "K" Line and P&O Nedlloyd.

Horizon Lines adjusts surcharges

Charlotte-based Horizon Lines has implemented changes to its bunker and intermodal fuel surcharges in the U.S./Puerto Rico trade.

Horizon Lines has decreased its bunker surcharge from $260 to $240 per TEU. It has also increased intermodal surcharges as follows:

- Zone 1 (Florida, New Jersey, Texas): $30 from $25 per TEU.
- Zone 2 (Alabama, Connecticut, Delaware, Georgia, Maryland, Massachusetts, New York, Pennsylvania, South Carolina, Rhode Island) $70 from $55 per TEU.
- Zone 3 (Arkansas, Kentucky, Louisiana, Mississippi, New Hampshire, North Carolina, Tennessee, Vermont, Virginia, West Virginia) $100 from $85 per TEU.
- Zone 4 (Colorado, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Ohio, Oklahoma, Wisconsin) $110 from $95 per TEU.
- Zone 5 (All other States, Canadian Provinces, Mexico) $120 from $105 per TEU.

The intermodal surcharge increases are designed to recover costs incurred by the carrier earlier in the year, Horizon Lines said.

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Timber Products Inspection www.tpinspection.com
TOC 2005 Asia www.toc-events.com
TRT Carriers www.trtcarriers.com
TT Club www.ttclub.com
Vancouver Port Corp. www.portvancouver.com
Waterman Steamship Corp. www.waterman-steamship.com
World Cargo Alliance www.worldcargoalliance.com
Yantian International Container Terminals www.yict.com.cn

China needs to knock off with the knockoffs

From across the street you spot a nice looking red motorcycle for sale, so you walk over to get a closer look. At first, you're convinced it's a Honda, but upon closer inspection the name on the motorcycle's gas tank reads "Hongda."

Welcome to the world of product counterfeiting in which third- and second-tier manufacturers copy name brand products and, with changes ever so slight, sell them to unwitting consumers at prices too good to be true. Anything may be subject to counterfeiting, from high-end wristwatches, computer software and handbags to more basic goods such as batteries, shampoo, automotive brake pads and pet food.

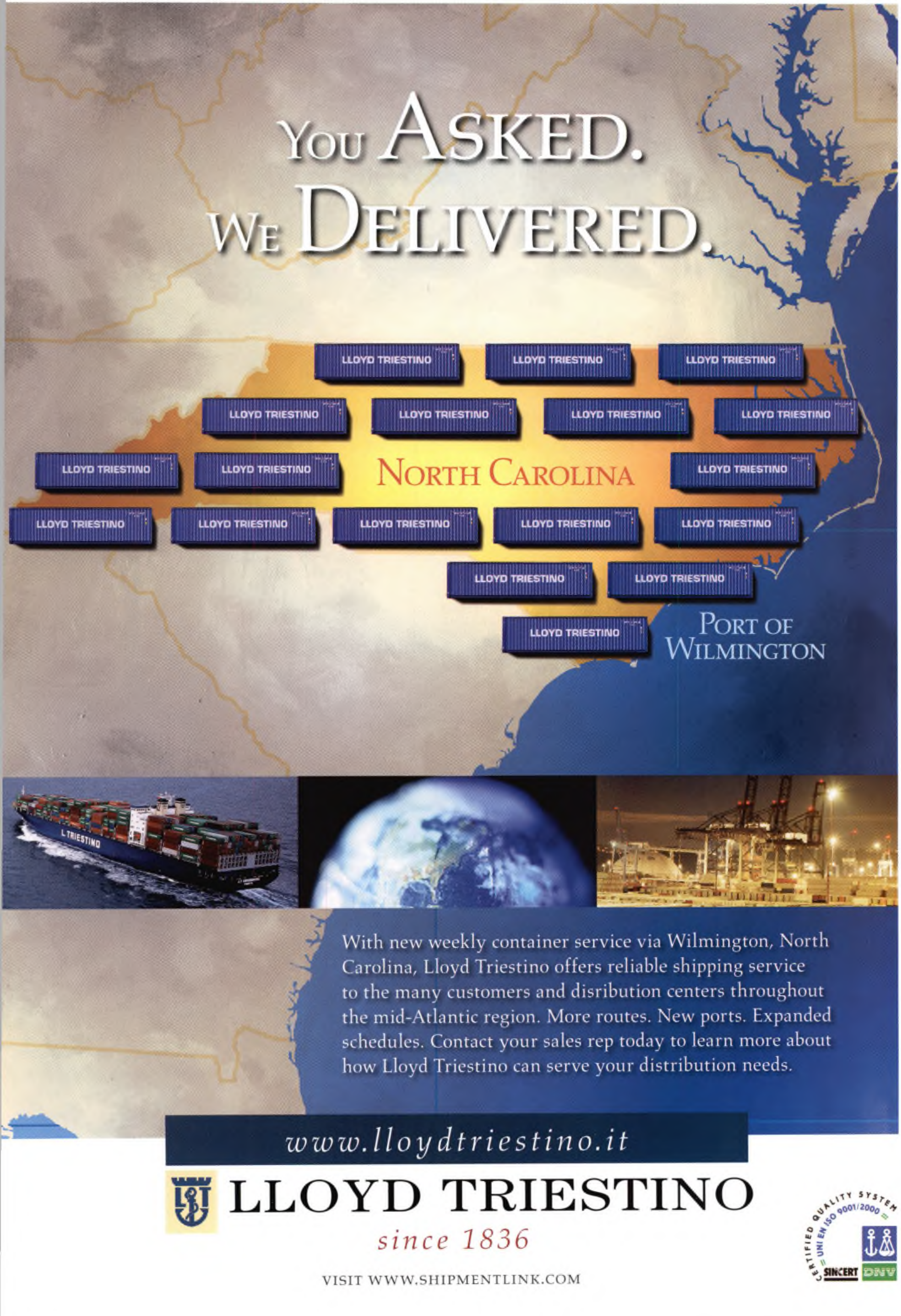
While every country has its share of counterfeiters, governments, trade groups and individual shippers have fingered China as the world's largest source for knockoff merchandise. Copyright and trademark infractions in China cost global companies perhaps hundreds of billions of dollars each year in lost revenues, not to mention the added health and safety concerns associated with these potentially shoddy goods. For many company chiefs today, counterfeiting ranks up there with terrorism on the list of biggest concerns to corporate well being.

As a newer member of the World Trade Organization, China is under increasing pressure to curtail counterfeit manufacturing within its borders and to keep these products out of the global supply chain. The Chinese government's Supreme People's Court recently stiffened penalties against individuals involved in counterfeit trade. In an article in this month's *American Shipper* (pages 32), we take a look at some of the recent anticounterfeit actions undertaken by China Customs.

However, at the current pace of China's crackdown, shippers may not realize any substantial improvements for several years. Some companies, tired of waiting for the Chinese government to strengthen its intellectual property rights enforcement, have taken matters into their own hands. Through a Beijing court in late December, Honda was able to put the brakes on China's Chongqing Lifan Industry Group Co. from building and exporting anymore Hongda motorcycles. Another Japanese company Sony also announced in December that it has successfully dismantled a Chinese counterfeiting operation manufacturing PlayStation game consoles.

China needs to wage an all-out, highly publicized war against counterfeiters if it wants to keep global shippers rooted in its industrial fabric. Otherwise, business hungry neighboring countries will gladly oblige.

Christopher Gillis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