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**NOT YET ALL ABOARD...
BUT ALREADY ALL AT SEA OVER
CONTAINER SECURITY INITIATIVE**

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With Compliments

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ABSTRACT

Prior to September 11 there was a popular saying that “a terrorist is someone who has a bomb, but does not have an air force”. That saying is now passé. The September 11 attacks on the US have put paid to such confident assumptions. They sent powerful shockwaves that threatened to shatter the very core of public confidence in the world’s transportation system. They have shown how civilian transports can be used to murderously target civilians *en masse*. They have also brought into sharp focus the grim reality that transportation security can no longer be considered a tertiary issue, but one that warrants serious critical examination by all governments and the business world. The US Customs Service’s Container Security Initiative (CSI) is one such radical product of that urgent reassessment. It has made big waves throughout the world of maritime commerce and security policy. This paper provides a broad appraisal of the take-up of the CSI thus far. It examines and elaborates on the many concerns (i.e., sovereignty, security, commercial interests, technology, trade regime renovation *et al*) related to CSI adoption, and how they could be addressed. It also suggests some broad principles by which CSI implementation could be pursued by the Americans and all prospective partners concerned. The paper hopes to make a timely contribution to the nascent academic/policy discourse on a matter of keen (inter)national interest.

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NOT YET ALL ABOARD...BUT ALREADY ALL AT SEA OVER CONTAINER SECURITY INITIATIVE

*Intercepting the ripples of danger in this tidal wave of commerce
is about as likely as winning a lottery.¹*

Stephen Flynn

*To sustain prosperity, we open the gates. To ensure security, we close the gates. We
clearly need to move beyond the metaphor of an open or closed gate.²*

Admiral James Loy

Introduction: Trojan Seahorses?

In the current age of strategic anxiety where unthinkable nihilistic forces threaten to roll back the waves of free trade and globalisation with mass casualty destruction and massive infrastructure disruption, there is a fine line between paranoia and prudence. The spook of the unknown, or what in *Rumsfeldspeak* has been termed the fear of “unknown unknowns,”³ has been abetted by the agents of global terror. The current insecurity milieu is one characterised by higher false alarm rates emanating from the increased cyber-chatter and the dark machinations of an unseen enemy plotting in the shadows or by frequent disconcerting reports of a faceless adversary discreetly ‘casing’ a potential target under broad daylight. The shock of the September 11 attacks on the United States has translated into an understandable debate over the introduction of increased surveillance regimes and

¹ Stephen Flynn, ‘Beyond Border Control’ in *Foreign Affairs* (Nov/Dec 2000). See also his prophetic pre 9-11 warning that “Most of the physical plant, information, communications, power and cargo handling sectors of the marine, surface, and aviation transportation systems are unprotected or are equipped with security sufficient to deter only amateur vandals, thieves or hackers...America’s transportation infrastructure may become the national Achilles’ heel, risking lives and prosperity” in his ‘Transportation Security: Agenda for the 21st Century’ in *TR News*, No. 211 (Transport Research Board, Nov-Dec 2000), pp. 3-7; See also his ‘Transforming Border management in the Post September 11 World’, available at http://webdev.maxwell.syr.edu/campbell/Governance_Symposium/flynn.pdf

² Head of US Coast Guard Admiral James Loy cited in ‘When Trade and Security Clash’, in *The Economist* (6 Apr 02), p. 61.

³ As US Defence Secretary Donald Rumsfeld put it when defending Washington’s view that the United States and its allies could not wait for “absolute proof” before taking action against groups and states suspected of acquiring weapons of mass destruction: “The message is that there are no knowns. There are things we know that we know. There are known unknowns, that is to say there are things that we now know we don’t know. But there are also unknown unknowns – things we do not know we don’t know...There’s another way to phrase that, and that is that the absence of evidence is not evidence of absence.” See

concerns over curbs on civil liberties and other inconveniences to extant practices like trade facilitation. Chronic fears of a repeat of the devastating attacks on the US homeland will not go away anytime soon. The chilling reminder has been well served by *Al Qaeda*'s deadly reassurance that: "We, the fighters of the holy war, in general, are hoping to enter the next phase...It will be a war of killings, *a war against businesses*, which will hit the enemy where he does not expect us to."⁴

In an age where *war is the extension of terrorism by any means*, the fear has permeated all public sectors and private domains of civilian and commercial public transport and logistics. As a case in point, the arrest by Italian police of a man stowed away in a steel box on a container ship at Genoa in October 2001 triggered renewed fears over transport security around the world. Almost a year later, in another telling, if controversial, 'experiment' that exposed the gaping holes in America's port security, ABC News borrowed 15 pounds of depleted uranium from an environmental group, and carried it by train from Austria to Istanbul, Turkey. The contents were clearly marked and packed in a container with wooden horse carts and terra cotta vases before being successfully shipped overseas to New York. Through it all, the depleted uranium in the container went undetected – seven countries, 25 days and 15 pounds of uranium, without a single question asked.⁵

Besides grave security concerns, there is little doubt that the fear factor has exacted a heavy price on world trade and investor confidence by threatening to significantly slow global economic growth; if it has not done so already. Although the direct effects of 9-11 are difficult to measure, experts have cautioned that all the tougher transport security measures being put in place or proposed by the United States and other countries may slow down global transport, creating an overall dampening effect on world trade growth. They estimate that the net result could be an increase in the cost of trading internationally by 1-3%.⁶ Others have warned that the aggregate effect of a sudden increase in checks

⁴ Rumsfeld: NATO Threatened by 'Unknown Unknowns' (6 Jun 02), available at http://www.reuters.com/news_article.jhtml?type=politicsnews&StoryID=1058803.

⁵ Statements made by Abu Laith, reportedly claiming to be a spokesman of AL Qaeda. See *Today*, (11 Jul 02), p. 20. *Emphasis mine*.

⁶ David Bauder, 'ABC News Smuggles Uranium into US' (6 Sep 02), Associated Press, available at <http://www.salon.com/ent/wire/2002/09/06/uranium/>.

⁶ World trade was up 12% in 2000, flat in 2001 and expected to rise only 2% or so in 2002; see Rana Foroohar, 'A Blow to Global Trade: The Economic Impact of the Attacks is Becoming Clear', in *Newsweek* (9 Sep 02), p. 46.

and controls will damage the US economy as the basic approach may be too blunt and misguided. Already, US public ports had spent nearly US\$50 million for security-related enhancements in the wake of September 11, with most of the money spent on personnel – the hiring of new officers and overtime pay. Enhanced security measures bring in tow cumbersome restrictions, which go against the well-established business philosophy of the ‘Just-In-Time’ logistical economy.⁷

Notwithstanding the ‘guns and butter’ debates, it is evident that transportation security and economics can no longer be treated as an afterthought or tertiary issue post 9-11.⁸ Shaken by its vulnerability as demonstrated in the 9-11 attacks, America’s complacent attitudes have changed. Not surprisingly, the US has sought above all to quickly implement across the board, broad-ranging and radical security measures to protect its homeland. To be sure, one cannot be too careful these days and many countries now share in the profound sense of vulnerability. In prosecuting its war against terrorism worldwide, the US, can be said to be in a state of low intensity conflict where the focus on homeland security is now indivisibly linked with international insecurity. The struggle will be protracted and at times, shadowy. It therefore has compelling reason to impose cumbersome checks, unprecedented surveillance protocols and enhanced security procedures which invariably restrict and slow down the free flow of people, information and trade. Such measures are meant to err on the side of caution in protecting lives, vital infrastructure and national interests from catastrophic terrorist attacks.

In the current age of unrestrained terrorism, shipping containers have become another bugbear for security managers as modern-day Trojan (sea)horses potentially capable of mass destruction. Shipping containers have even been likened to ‘slow-moving cruise missiles’ which load up at the port of origin, meander their way through the littorals and propel across the pelagic commons towards their target destination at some distant

⁷ Ironically, the drawn-out labour dispute and strike at the 29 major US west coast ports, which began on 27 September 02, provided a poignant case-study of a serious disruption to the Just-In-Time sea trade. It was estimated to have cost the US economy as much as US\$1 billion in Asian exports each day the ports were closed. See Linda Collins ‘Port Row Halts Work at Plants’ in *The Straits Times* (5 Oct 02), p. 6. See also Fared Zakaria, ‘Time to Save Just In Time’ in *Newsweek* (12 Nov 01), p. 13, and Janet Plume, ‘Customs Folding Ocean Moves Into C-TPAT’ in *Gulf Shipper* (1 Apr 02) available at http://www.gulfshipper.com/archive_gs/featureoftheweek/featureoftheweek-4-1.shtml.

⁸ See Sean Kilcarr, ‘Transportation Security’ (12 Sep 02) available at http://tragedy.fleetownder.com/ar/fleet_transportation_security/; and Richard Ernsberger JR. *et al*, ‘Fortress America’ in *Newsweek* (12Nov 2001), pp. 52-58.

port, often changing platforms at transshipment hubs en route. It is at the ports of origin and transshipment hubs that the US Container Security Initiative (CSI) hopes to come into play by initiating a new global maritime trade and security regime that seeks to preserve cargo integrity; at least for those containers heading for the US homeland.

CSI - A Big Hairy Audacious Goal

The idea for the CSI was publicly mooted by Robert Bonner, Commissioner of US Customs, in early January 2002. In contemporary management parlance, one could say that the CSI represents the US Customs Service's bold attempt to define and develop its own *Big, Hairy Audacious Goals* (BHAG)⁹ to thwart WMD terrorism. The concept of CSI is in theory deceptively simple. The US wants to implement a system of layered security that virtually extends its borders and gateways as far from continental America as possible. It aims to stop terrorists shipping weapons of mass destruction and other suspect cargo into the US. The thinking is that the sea, like the air and land, represents a vast blue yonder from which the established sea transport routes of the world's commerce shipping can be exploited to do grave damage to the US homeland. It follows then that these potential maritime container threat vectors should as far as possible be pre-screened and pre-empted en route before they call into US ports.

A catastrophic terrorist attack through the container cargo traffic would not only disrupt American lives and livelihoods, it would also severely derail the entire world's commerce trade system on which the national engines of the global economy ride. As eminent maritime strategist Geoffrey Till had noted: "Sea transportation costs have been drastically reduced over the past decade or so, but at the price of a tight 'just-in-time' philosophy that makes it disproportionately vulnerable to local shocks."¹⁰

Given the maritime trade vulnerability, the pugnacious Al Qaeda statement quoted earlier, and the experience of the 9-11 attacks which severely disrupted the airline industry

⁹ Exceptional organisations set challenging and often risky goals. BHAG is a concept advocated by James Collins and Jerry Porras, *Built to Last: Successful Habits of Visionary Companies* (Harper, 1997). The concept has also been adopted by VP and Senior Scientist of *Sandia Labs*, Gerry Yonas, in Sandia's advanced technology R&D work; See also *Sandia LabNews*, Vol. 53, No. 8 (19 Apr 02).

¹⁰ See Geoffrey Till, 'Seapower, 'The Indian Ocean and the 21st Century' in his *Discussion Notes for IMF, USI and IDSA*, (unpublished, Feb 02).

world-wide, it is clear that terrorists now target not just lives and minds, but also prevailing ways of going about one's everyday life and doing business. After half a century of intense capitalist globalisation, which helped reduced trade barriers world-wide, visions of a borderless world are in for some serious remake. The stepped-up policing of national borders and raising of the bar on all physical entry-barriers (for human and cargo traffic) have become urgent concerns, particularly of American national security. As Commissioner Bonner had baldly put it:

We can no longer afford to think of 'the border' merely as physical line separating one nation from another. We must now also think of it in terms of the actions we can undertake with private industry and with our foreign partners to pre-screen people and goods before they reach the US. The ultimate aims of 'pushing the border outward' are to allow the US Customs more time to react to potential threats – to stop threats before they reach us – and to expedite the flow of low-risk commerce across our borders.¹¹

To launch its vision, the US initially canvassed the world's top 10 megaports which account for nearly half of all seagoing containers bound for the US to sign up for the CSI programme. The CSI net has since widened to include the top 20 megaports, and looks set to widen even further in the months ahead, as CSI gains more takers. Hong Kong accounts for 10% of US imports by sea, with other Asian ports and Rotterdam responsible for about 5% each. About 90% of the world's cargo moves by container and more than 16 million containers arrive in the US by ship, truck and rail annually. Every year, the US Customs checks about 2 per cent of the 5.7 million containers entering US ports. The CSI will be modelled along the lines of a recently introduced programme for US Customs officers to be posted in Vancouver, Halifax and Montreal with Canadian Customs officers reciprocally posted in Newark to pre-screen cargo plying between the borders of the two close neighbours.

On top of reciprocal customs officers deployments, some 54 high-tech x-ray machines have been deployed at US and Canadian ports to scan containers. Beyond the ports, the US has also despatched a battery of new radiological detection equipment to US borders and even countries afar to prevent terrorists from smuggling a 'dirty-bomb' that

¹¹ Robert C. Bonner's statement to the US Senate Committee on Commerce, Science and Transportation, Charleston, South Carolina, on 19 Feb 02

could spread radioactive waste over a large swathe of US population areas.¹² It should be noted, however, that the US-Canadian CSI arrangement may not be an entirely appropriate or accurate model for emulation by the other CSI ports worldwide. This is because there is significant cross-border trade that is reciprocal in nature and volume between the US and Canada, whereas many of the earmarked CSI ports' transshipment cargo headed for the US are mainly weighted unidirectionally towards the US, rather than the other way round. Furthermore, CSI transshipment ports are unlike North American ports that principally transport more cargo point-to-point (origin to destination – with less transshipment cargo). With a land border of 7,500 miles and a coastline of 90,000 miles, border crossings of 500 million per annum, truck crossings of 11 million per annum, and shipping port calls of 51,000 per annum involving millions of containers, it is easy to see why the CSI is an urgent flagship item on a tall action order for US Customs.

The CSI as spelt out by Bonner has four pillars:

1. To establish an international security criteria for identifying high-risk cargo that may contain terrorists or terrorist weapons.
2. To pre-screen high-risk container port of shipment, before they are shipped to the US.
3. To maximise the use of detection technology to pre-screen high risk containers, i.e., x-rays, radiation and chemical detection sensors, *et al.*
4. To develop and deploy smart and secure boxes with electronic seals and sensors to ensure cargo integrity especially after they have been pre-screened.

Early detection by enhancing information awareness and exploiting new data-mining/tracking technologies will be the twin key drivers underpinning the CSI. Already, the US Customs has been actively implementing ways to better secure advance cargo import information by refining the US\$1.4 billion Automated Commercial Environment

¹² 24 X-ray trucks have been deployed at national borders and ports of Boston, Long Beach in California and West Palm Beach in Florida. Another 24 were at ports in Egypt, Britain, Mexico, Saudi Arabia and

(ACE) system that is being put in place. The ACE, which is to be used by every US government agency that has a responsibility for US border security, is designed to expedite trade across US borders as well as enhance import targeting capabilities nationwide. The US Customs Service currently combines the use of various computerised enforcement systems such as the Treasury Enforcement Communications System (TECs), the Automated Commercial System (ACS) and the Automated Targeting System (ATS), to help enhance manual methods to identify trends and pick up red-flags (anomalies in data).¹³ ACE development is a long-standing technology insertion process that is part of the US Smart Border Initiative. It will replace the ACS (the current import system), and form an integral part of the CSI when ready.

Conceptually, the CSI appears to be straight forward and evolving steadily as more countries make tentative and in-principle steps to come onboard with the Americans. In praxis, the CSI remains polemical and the subject of considerable concern amongst the world's shipping community. It raises difficult issues that remain to be clarified and bridged. Such issues relate to increased costs and burden-sharing, port efficiency, discriminatory trade regimes, fears over encroachment of sovereignty, and even calls into question the real effectiveness of such an extensive and potentially expensive initiative. But having just suffered a monumental strike on the aviation Achilles heel the US may, again understandably, be in little mood for a purely cost-benefit calculus. This is especially so when the prevailing thinking and domestic pressure are such that doing something (or to be seen to be seriously doing so) is better than doing nothing. At least there is a fighting chance of pre-empting some catastrophic attacks and hopefully preventing a repeat of the 9-11 attacks. Nevertheless, the Americans will have more tough-selling to do with CSI. To avoid the risk of being still-born, it is clear that unilateral knee-jerk implementation is not tenable, and careful collaborative consultations with prospective global partners will be necessary in taking the CSI forward.

other countries. See report on 'X-Ray Trucks Scan Cargo for 'Dirty Bombs' in *The Straits Times* (25 Jul 02), p. 8.

¹³ See 'Automated Commercial Environment: The Primer' (25 Apr 2001) available at <http://www.customs.ustreas.gov/modernization/ace/sld001.htm> ; and 'Prevention and Suppression for Acts of Terrorism Against Shipping - CSI' at IMO-Maritime Safety Committee, 75th session, Agenda Item 17 (12 Apr 02), available at <http://www.uscg.mil/hq/g-m/nmc/imosec/75-17-33.pdf>

Steaming Ahead or Losing Steam?

For a start, the top 20 megaports that make up about 80% of the inbound container traffic to the US have been targeted by the CSI. Besides Canada, the Netherlands (Rotterdam), Singapore, France (Le Havre), Belgium (Antwerp) and Hong Kong were the first ports that were invited to lead the way. The first four have acceded, with in-principle pilot or ‘proof of concept’ caveats as first-movers onboard. In fact, Singapore, as the first port in Asia to adopt the new counter-terrorism procedures as part of CSI, has called for a tender of two advanced x-ray machines for use at its ports by January 2003. Overall, the competitive pressure to get onboard CSI appears to have generated a momentum of its own, with swift follow-up announcements by German ports (Bremerhaven and Hamburg) that they have also agreed to be part of the CSI.¹⁴

The list looks set to grow in the months ahead, if the US sells it right, and as ports around the world, mega or minor, feel it compelling in their commercial and national interest not to be left out of the CSI. As an indication of the speed at which CSI is steaming ahead, a team of US Customs inspectors has already been deployed to Rotterdam, to help screen US-bound shipping containers for potential terrorist threats. The CSI was scheduled to be fully operational in Rotterdam by 2nd September, and in Le Havre, Antwerp, Bremerhaven, and Hamburg in the few months following. The move to post US Customs inspectors abroad marked the first time in the 213-year history of the Customs Service that inspectors have been assigned outside of North America to pre-screen cargo.¹⁵ With each implementation success, the US Customs would increasingly find good reason to be optimistic about the high degree of receptivity to the CSI.

Despite the gathering momentum, it is likely that many countries - even if they have agreed in principle with the CSI pilots - would prefer to adopt an incrementalist ‘wait-and-watch’ approach in actual implementation, and they would remain cautious about granting the Americans *carte blanche* with CSI. Worries about CSI becoming a

¹⁴ The ports of Bremerhaven and Hamburg are among the top 20 ‘mega-ports’ of the world. In 2001, approximately 257,000 sea cargo containers entered the US from Bremerhaven and 103,000 from Hamburg. See *US Customs Service Press Release – ‘Germany Signs Declaration to Join US Customs Container Security Initiative, Strengthening Anti-Terror Coalition’* (1 Aug 02).

¹⁵ See ‘US Customs Inspectors Deployed to Rotterdam to Screen Containers’ (26 Aug 02), available at <http://www.useu.be>

back-door for unbridled external interference in domestic jurisdiction and enforcement regimes over port operations linger, especially among Asian ports.

Even European Union regulators have reacted strongly to US plans to screen sea cargo before they leave for the US; but for slightly different reasons. Wrong-footed by the speed of US action and willingness of individual member states to sign up to CSI, the EU has had to play catch-up, if not effect damage control. It had lobbied hard and has since presented its case to key US congressional advisors at a meeting in early August 2002 for a single US maritime security agreement with the EU which was preferable to bilateral deals with individual member states.¹⁶ In particular, the EU has also raised serious concerns that the stationing of US customs officers at the ports in Rotterdam, Le Havre and Antwerp could break international trade rules by blacklisting containers sent from other ports.¹⁷ The fear is that CSI could distort competition between EU ports by unduly penalising smaller facilities that do not have the resources and capacity to compete with CSI box hubs. Rather than work unilaterally or bilaterally to impose new security regimes on the shipping container trade, the European Commission has urged the US to work *within* international institutions, including the Group of Eight industrialized nations, the WTO, the World Customs Organization and the International Maritime Organization.

The CSI issue potentially piles on another item to the growing list of trade spats between the world's two trading partners, and a stalemate on the issue would not augur well for the increasingly palpable strategic rift¹⁸ in cross-Atlantic relations. Further down the road, it may not be implausible for the EU to come up with similar CSI or novel maritime trade-security regimes/demands of their own to maintain economic competitiveness and for security reasons. The latter concern remains germane for the EU countries, given that the transnational nature of the new threats can, just as surely, impact gravely on the European heartland.

¹⁶ See 'Brussels to Lobby US on CSI' in *LlyodsList.com* (1 Aug 02).

¹⁷ Trade relations between the 15-nation EU and US had been strained by disputes ranging from farm aid to hormone-treated beef to steel tariffs and export tax breaks. See 'EU Slams US' Plan to Screen 3 European Ports' in *Business Times*, (15 Jul 02).

¹⁸ For a good account of the growing clash in strategic cultures between the US and Europe over a range of economic and political issues, as well as the argument that it presents a threat to the transatlantic alliance more serious than any in the past 50 years, see Philip Stephens, 'An Insecure Alliance' in *WorldLink: The Magazine of the World Economic Forum*, (Jul 02) also available at <http://www.worldlink.co.uk/>. See Roy Denman, 'How to make the Americans Listen' in *The International Herald Tribune*, reprinted in *The Straits Times* (17 Jul 02), p. 16.

Hong Kong was similarly hesitant in signing up to the Container Security Initiative. As the top foreign port for US bound cargo, it had been slow to agree to join the CSI. It only agreed to sign-up on 23 September 2002, with the expressed hope that the policy change would give Hong Kong a competitive edge over the mainland Chinese ports.¹⁹ But concerns remain and the time-table for Hong Kong's CSI implementation remains up in the air. In particular, the proposal to have US Customs agents screen for terrorist cargoes had been met with a cool response initially. Industry insiders had cautioned that Hong Kong's port efficiency should not be sacrificed at the expense of excessive or overly detailed inspections by US Customs. About 2.2 million TEUs or nearly 20% of Hong Kong's containerised exports are shipped from Hong Kong to US ports. Of these, some 80% originate from businesses and manufacturers from the mainland.

In fact, Hong Kong had earlier sent a delegation to visit several ports in the United States in June 2002 to evaluate how CSI might affect longstanding shipping practices, with an eye on balancing potential security benefits against the impact on trade and port competitiveness. Hong Kong's newly-appointed Secretary for Commerce, Industry and Technology, Henry Tang Ying-Yen had previously emphasized that if Hong Kong were to implement CSI, US Customs officers stationed in Hong Kong would not have any inspection or enforcement powers. He also made the assessment that CSI would likely have an adverse impact on Hong Kong and other CSI ports. He identified two key problems that could hobble the CSI. The first is that shippers, freight forwarders and shipping lines may have to upgrade their computer systems, because of the need to submit advance information. This meant redesigning the information system to allow US customs officials to access shipment details. Such efforts would incur significant extra costs. The second is that the CSI would "affect the longstanding mode of operation of the shippers, freight forwarders and shipping lines."²⁰

¹⁹ Mary Kwang, 'New Security Pact: US Customs Officials to Inspect Cargo at HK Port' in *The Straits Times* (24 Sep 02), p. A2. See also Wong Joon San, 'Hong Kong CSI Talks End Without Much Success' available at <http://www.marinedigest.com/august2002SR2.html>

²⁰ As Henry Tang put it, "Currently carriers are allowed to submit cargo manifests to Hong Kong Customs within seven days after the cargoes have been exported...Shipping lines usually only request freight forwarders or shippers provide cargo information for the preparation of the manifest after the vessel has

It is clear that more than mindset changes will be necessary for CSI to gain wider acceptance. Joint capacity-building and forging consensus on the shaping of evolving norms – which address the realities of local concerns and regional/global conditions – will be important turn-keys for project success. There is perhaps a third ‘problem’ that may hamstring the CSI downstream. Even if countries agree to abide by the letter and spirit of CSI by declaring their support in signing up to come onboard early, there is still the very real possibility that CSI may turn out to be a white elephant. This is, to be sure, the inherent danger of all Big Hairy Audacious Goals. In the final analysis, CSI may turn out to be little more than an expensive public relations exercise in effete mutually-comforting assurance for all involved. Like many new security ideas, it may not do much to stop terrorism. This is especially the case when one considers the bald reality that CSI’s risk-profiling and pre-screening measures ultimately represent merely a drop in the ocean in the long and broader fight against global terrorism. Although a politically important symbolic gesture that signals US resolve and cooperative partnership by participating countries on the matter, effectively screening the enemy beyond America’s gates will, assuredly, need to go well beyond CSI if it is not to end up as an exorbitant exercise in futility.

On another beachhead beyond Hong Kong, it has been reported that US Customs officials had planned to formally request China to agree to a proposal to station US customs agents in Chinese mainland ports.²¹ It would indeed be an unprecedented act of co-operation should China agree to the proposal. Casting such an elaborate and extensive CSI net would likely take some convincing and it is not yet certain that co-operation and enforcement measures taken can be harmonised for all CSI ports, given the differing standards in cargo handling capacity and nature of the container business. For example, much of the cargo that flows through Chinese ports to the US are for products made from the domestic Chinese manufacturing and industrial economy. Whereas, for a transshipment hub like Singapore, cargo comes from all over the region and the world before being offloaded from one ship and reloaded onboard another for shipment across the Pacific to the US.

departed.” This is the industry norm. See Keith Wallis, ‘Hong Kong Admits Adverse Effects of US Box Measures’, in *Lloyd’s List* (24 Jul 02).

²¹ See *ChinaBiz Daily*, (19 Jul 02)

Besides, there may even be Chinese concerns that the CSI may become an instrument of US protectionism. Unfounded or otherwise, the concern that the growing Chinese container trade heading to the US may be slowed down by overly stringent CSI checks as a result of future bilateral trade friction may need to be assuaged. This is of considerable importance given the fact that strong export growth from China's southern port, Shenzhen, is already well on its way to replacing Shanghai as the mainland's largest port.²² Shanghai is currently the fifth largest port in the world.

The US has also sent a delegation of US officials to call on the South Korean government to intensify security checks on US bound containers and for the stationing of Customs officials at Korean ports, as part of the effort to rope Busan and Gwangyang into the CSI loop. Reactions have been cautious. As a South Korean government spokesman disclosed: "We have passed on our position in principle to study the proposal. But it is too early (*sic*) whether we will comply because the decision requires discussion with related ministries"²³

At the other end of the spectrum, countries like Thailand and Malaysia have expressed keen interest in coming onboard the CSI, especially when Singapore had already gotten onboard and the promise of competitive benefits like faster 'green-lanes' appear too attractive an incentive to miss out on. Already, the competition to get onboard CSI might have turned up the heat on the rivalry somewhat, judging by some media reports.²⁴ Though ranked No. 25 in the world's top 50 container ports for 2001, fledgling ports like Malaysia's Port of Tanjung Pelepas has been pressing the Malaysian Federal government to fast-track its participation in the CSI. In fact, it has already filed an application to join the Customs-Trade Partnership Against Terrorism (C-TPAT), the US Customs' government-business programme designed to tighten international supply-chain security. Malaysia's other port, Port Klang, which ranks No. 12, has also been working

²² See 'Shenzhen on a Roll with Container traffic Surging 51%' in *The Straits Times*, (17 Aug 02), A 28.

²³ See P.T. Bangsberg, 'US Presses S. Korea on Box Security' in *JoC Online* (5 Aug 02).

²⁴ See 'Singapore Accused of Disrupting Port of Tanjung Pelepas' Position After Signing CSI' available at *Nanyang.com* (19 Sep 02). The unsubstantiated report claims that US Customs had ordered all cargo in Malaysia headed for the US be sent to Singapore for checks before re-sending to the US. It also alleged that Singapore's decision to join the CSI was forcing the main shipping companies in the port of Pelepas to go through Singapore's CSI pre-clearance before going to the US. However speculative, the report, in casting aspersions, highlights the increasingly intense and acerbic nature of port competition between the two neighbouring states.

with the US Customs for full implementation of CSI requirements by end 2002.²⁵ The Malaysian interest is noteworthy, given that both Port Klang and Tanjung Pelapas are not currently on the solicited list of top 20 megaports with the highest percentage of containers headed for the US annually. The following table shows the percentage of containers headed for the US annually for the top 20 megaports.²⁶

Top 20 Megaports (Percentage of Containers Headed for the US Annually)

1.	HongKong	9.8%
2.	Shanghai	5.8%
3.	Singapore	5.8%
4.	Kaohsiung	5.6%
5.	Rotterdam	5.1%
6.	Busan	5.0%
7.	Bremerhaven	4.5%
8.	Tokyo	2.8%
9.	Genoa	2.1%
10.	Yantian	2.0%
11.	Antwerp	2.0%
12.	Nagoya	1.9%
13.	Le Havre	1.9%
14.	Hamburg	1.8%
15.	La Spezia	1.7%
16.	Felixstowe	1.7%
17.	Algeciras	1.6%
18.	Kobe	1.6%
19.	Yokohama	1.5%
20.	Laem Chaban	1.4%

Despite the strong interest shown, nagging questions remain as to the eventual shape and nature of CSI, and its ultimate impact on port efficiency. As Malaysian Transport Minister Ling Liong Sik had qualified: “The US Customs Service approached us recently and we were fully supportive...*on condition* that it will not lead to delays or congestion at the ports.”²⁷ Malaysia’s Royal Customs Department Director-General Datuk Abdul Halil had also reportedly said that all inspections would be carried out by Malaysian Customs officials, while the US officials could only look at and choose the

²⁵ See ‘Malaysia Port Seeks Closer US Box Ties’ in *Journal Of Commerce* (5 Sep 02); & Kang Siew Li, ‘Malaysia Starts Vetting US-bound Containers’ in *Business Times* (Malaysia, 8 Aug 02) available at <http://www.informare.it/news/review/2002/businessimes0067.asp>

²⁶ Source: US Customs (cited in *The Sunday Times*, 22 Sep 2002, p.4)

containers they intend to inspect.²⁸ All in all, the Malaysians have indicated that besides Port Klang and Tanjung Pelepas, the Johor port and Butterworth Port in Penang are also being considered for CSI.

Amidst the litany of understandable concerns and mounting interest, the US had sought to reassure the targeted megaports - with mixed success so far - that the US will “work in partnership with governments in the countries where these megaports are located to build a new international security standard for sea containers.”²⁹ The latter part of the statement – “to build a new international security standard for sea containers” – will require the support of the wider multinational shipping community, and world maritime agencies and forums.

To be sure, the nature of that emergent partnership is now under international scrutiny as the rest of the megaports and smaller ports monitor how the US - Singapore/Rotterdam/Le Havre and Antwerp pilot CSI ports shape up. The challenge will be in navigating the shoals of sovereignty, security and cost issues, when testing and implementing the CSI pilot port projects to prove that the concept works in ultimately safeguarding global maritime trade across the pelagic commons.

Addressing Partnership Concerns

To overcome the many concerns, the US will need to do more serious soft-selling of the CSI with some political delicacy, and with greater coherence and clarity. This can be done by adopting a consultative posture for close collaboration on the implementation of the CSI. It will have to tread sensitively in areas which may encroach on the sovereignty of CSI partner states. One should appreciate that containers are *intermodal* (transportable by sea, and by road and rail). The intermodal *modus operandi* of the container logistic system makes it “difficult to regulate as it crosses jurisdictional boundaries.”³⁰ This geopolitical fact of cross-boundary jurisdiction underpins the practical challenge of normative CSI enforceability and should not be forgotten.

²⁷ See P.T. Bangsberg, ‘Malaysia Joins US Box Initiative’ in *JoC Online* (8 Aug 02). *Emphasis mine.*

²⁸ V. Shankar Ganesh, ‘US Customs May Pre-Screen Cargo Here’ in *The New Straits Times*, (24 Sep 02).

²⁹ See ‘EU Slams US’ Plan to Screen 3 European Ports’ in *Business Times*, (15 Jul 02).

Balancing Realistic Ends with Reasonable Means

All parties involved, especially the Americans, will also need to be realistic about the ultimate value of the CSI. At best, the measure seeks to give some form of limited public assurance through cargo supply chain visibility and early risk-profiling measures allowing more reaction time for threat cargo interdiction. Free trade is a world-wide net with many big holes and there needs to be some realism and realisation that it is *well nigh* impossible to plug all the (loop)holes definitively or unilaterally (assuming it were possible in the first instance). It is obviously not in the interest of those advocating greater global free trade to do so after spending much of the post-Cold War era trying to batter down national walls to enter new markets. Even an increase of a few percentage points in the inspection rate of the cargo headed to the US would put a severe brake on the smooth transshipment system and will be intolerable for many far-flung CSI ports; not to even talk about wishful 100% cargo inspection.

In any case, even if it were hypothetically possible to significantly pre-screen up to a larger percent of the container cargo at CSI ports, the danger would not be neutralized. This is because even if one piece of infiltrated cargo arrives at a US port, it may be too late; especially given the wide array of WMD potentially on the loose out there. Asking for early documentation to help in risk-profiling would also be a huge challenge. As many shipping experts have noted, “[d]igitized or not, the maritime industry’s present documentation is unreliable.” As has been reported in one instance when US Customs audited 181 ships, it found that 96 had more or fewer containers onboard than identified, and “the bills of lading describing the containers’ contents were also incomplete or falsified”.³¹ Even with the right targeting information and risk management protocols in place, it would still be a physically impossible task to verify all declarations with every actual item being shipped. When one contemplates seriously upon the actual info-processing capabilities from shipper to shipper and country to country, the challenge would be compounded by the wide disparity in secure container cargo handling capacity and capability between the more advanced and less developed ports.

³⁰ ‘When Trade and Security Clash’, in *The Economist* (6 Apr 02), p. 60

³¹ See Dave Eberhart, ‘Container Ships – The Next Terrorist Weapon?’ in *NewsMax.com* (15 Apr 02).

In addition, the “volume of paper work would be mountainous,”³² and the paper trail messy, especially when a typical container cargo transacts through many parties and agencies. These range from exporters, importers (shippers), shipping lines, insurers, time-charterers to financiers and governments. In the final analysis, checks are never foolproof and it would be a tall-order to expect all cargo to be screened. Grand calls for “supply-chain dominant awareness”³³ must be tempered by realistic expectations in a world of asymmetric means (capacity/capability) and political will in the wide gulf between the rich North and the poor South where the global logistics trade traverses. It stands to reason then that the US should not impose excessively cumbersome, unrealistic and unreasonable measures for risk profiling and screening of containers on its CSI partners. On the part of the CSI partners, a certain amount of accommodation and alignment of customs and legislative mechanisms may be necessary if CSI is to satisfy US objectives while preserving the respective partnering state’s national interests.

Sovereignty Sensitivities and Customs Officers

The posting of US customs officers into CSI ports to scrutinise US-bound containerised shipments and to assist in searches will also be a sensitive issue.³⁴ Agreements and codes of conduct can spell out clearly the OB (Out-of-Bounds) markers. But customs officers on the ground will have to face the day to day challenge³⁵ of ensuring that competing interests are minimised and common ones converged so that any differences in enforcement regimes and disputes are resolved amicably in a timely manner through mutual arbitration and agreement.

A repeat of the historical problems associated with the stationing of overbearing trade officials at Asian ports would be something the Americans would do well to avoid

³² *Ibid.*

³³ Flynn, *Op Cit.*

³⁴ It is interesting to note that the New York Police Department has similar plans to deploy police officers in at least five foreign countries, and later possibly in Southeast Asia, in an ambitious effort to give the city’s police force a global reach in its anti-terrorist operations. See ‘New York To Post Police Officers Abroad’ in *The Straits Times*, (16 Jul 02), p. 4.

³⁵ For example, in Hong Kong, the eight Kwai Chung container terminals handle about 60% of Hong Kong’s total throughput while the rest is handled by the river trade terminal and mid-stream operators operating from public working areas. As has been noted by a source in a report: “Are US customs agents going to be stationed at each of the public working areas? How are the triads who are long-suspected of controlling these operations, going to react to that?” See Keith Wallis, ‘Port Delay Fear from Checks’, available at <http://www.telecom.globalsources.com/TNLIST/2002/06/10/xfdws/2821-1704-PORT-D...>

when implementing the CSI. After all, sovereignty remains a highly sensitive issue. For countries like China in particular, the adverse impact of uninvited ‘foreign spheres of influence’ (such as the contentious US Open Door policy in the late 19th century to mid 20th century) continue to haunt Chinese memories. The historical chapter in China’s external relations is a constant reminder of the humiliating concessions it had to give to the western imperialist powers, and therefore the need to guard its sovereignty and commercial interests jealously. The historical precedent is especially pertinent when the net result of CSI may not, in the final analysis, do real justice to any excessively stringent pre-screening measures put in place that may unnecessarily strain trade relations. Securing the confidence, trust and maintaining the goodwill of partner CSI states would be an imperative for sustained co-operative engagement by ground enforcement agencies on all sides. At the recent signing of the *Declaration of Principles on CSI in Singapore on 20 September 2002*, US Customs Commissioner Bonner had assured in his speech that “US Customs officers will not be enforcing US laws in Singapore and they will not be enforcing Singapore’s laws.” The assurance of close bilateral customs partnership with the pooling of joint resources and expertise was a timely tack that should go down well with the rest of the US Customs’ CSI partners who will have to host US Customs officers.

Trade Facilitation and Rule-Making

The CSI should not hamstring the free flow of commerce the globalised world has enjoyed and thrives on. Ultimately, there must be a need to maintain an even keel between security and trade efficiency. This can be done by jointly ballasting the relevant issues and managing expectations on all sides. As US Republican Don Young, Chairman of the House Transport and Infrastructure Committee, told a January 2002 conference on maritime security: “Let’s not get to a point where we’re so over-secure we can’t move freight too...If you do that, you lose your profit margins and you’re not competitive with other countries.”³⁶ This remains an important pragmatic reminder when implementing the CSI, eschewing the risk of going overboard with unrealistic risk-profiling and overkill screening measures. In other words, any new countermeasures - logistic protocols or security regimes - implemented should not be counterproductive to trade facilitation. The

³⁶ See ‘Justified Paranoia: US Security to Expand Abroad’, in www.Irfairplay.com (14 Feb 02), pp. 17-20.

two facets of protection and trade facilitation, as US Customs Commissioner Bonner had rightly emphasized, “are not mutually exclusive.”³⁷

In implementing CSI, the views of the international shipping community will also need to be actively sought and included where possible. Take for example, the issue of ‘rule-making’. The World Shipping Council (WSC) recently published a robust 24 page commentary to the US Customs Service’s proposal to introduce radical changes to the extant Cargo Manifest Filing system practised by shippers worldwide.³⁸ Representing 90 per cent of the shipping capacity serving the world’s largest economy, it had asked the US Customs for more time to deliberate and prepare for any eventual tightening of container security rules. The WSC commentary critically catalogues the laundry list of practical difficulties and polemical issues, in considerable detail, that attend the US Customs proposal to renovate the extant manifest system as part of the CSI developments. In particular, it takes critical aim at the US Customs’ proposal to change the Cargo Manifest Filing system. The US Customs wants to change the extant Cargo Manifest Filing system from one which currently records cargo information after the cargo is loaded onboard a ship, to one which requires the carrier to create and file a manifest for what it *expects* will be loaded onboard in advance. In fact, many countries would no doubt question the feasibility for the shipping industry to provide advance cargo information prior to the departure of containers from ports; issues of timeliness and fidelity notwithstanding. The US Customs Service’s ‘rule-making’ proposal for advance cargo manifests potentially creates additional burdens to the vessel carriers. It has the very real potential to result in operational delays and increased costs for the vessel carrier. The WSC commentary stresses both the need to recognize the limited scope of the cargo manifest and its operational implications. In sum, the WSC warns against the adverse repercussions on carriers, port operators and shippers if the US Customs implemented the new rulings without close consultation and greater clarification on the range of practical and policy issues. The practical reality is that CSI cannot go it alone only at the government-to-government level without the important inputs of the international shipping community. To be sure, the US Customs Service will need to continuously engage the wider

³⁷ He made his remarks to the American Chamber of Commerce at a lunch talk in Singapore on 20 Sep 02, following his morning signing of the *Declaration of Principles on CSI* with his Singapore counterpart.

³⁸ See ‘Comments of the World Shipping Council Before the United States Customs Service in The Matter of Advance Cargo Manifest Filing Proposed Rule-making for Vessels Loading Cargo at Foreign Ports for Transport to the US’ (9 Sep 02); See also ‘Delay to Security Pact’ in *Today*, (12 Sep 02), p. 16.

international shipping community in parallel with efforts to deal with the major ports and domestic US trade constituents on CSI. For all practical purposes and intents, the partnership model should also be extended to the private shipping sector as the latter will be the ones most affected by any new CSI measures and they will be the ones that will help CSI to ultimately take off as planned. Furthermore, megaports can ill afford to ignore the concerns of the shipping community if they want to keep their businesses afloat and moving. In the end, the shipping community represents a critical segment of the world business community involved in the global supply-chain movement. To some extent, this concern is being addressed by the US *Customs - Trade Partnership Against Terrorism (C-TPAT)*, which runs parallel to CSI. The C-TPAT will be discussed later below.

Cost Burden-Sharing, Smart Technology Collaboration and Capacity Building

There are concerns by prospective CSI ports that they may be left in a situation whereby they take over all the burdens of US controls *in situ* at their ports. Gatekeepers often have a thankless task in holding the can, therefore their concerns and co-operation should never be taken for granted. While shipping lines are naturally concerned about how new CSI measures may adversely affect their businesses, CSI ports have to grapple with the hefty capital investments needed up-front for the development and introduction of smart technologies for screening containers. Screening-out CBRNE (Chemical, Biological, Radiological, Nuclear and Explosive) threats require a special suite of full-spectrum detection capability sensors to be deployed at gateway ports. Furthermore, additional security measures like the potential use of electronic seals to preserve in-transit cargo integrity, new X-ray machines for pre-screening containers and advance data on cargo manifest come at some cost and no small inconvenience for any partner to the US CSI. For example, new x-ray machines which employ patented Backscatter X-ray technology which make it easier to detect low density objects like ‘dirty bombs’, which might escape normal x-rays, entail high initial outlays and considerable recurrent costs. Avenues should be explored for some cost burden-sharing mechanism to be built into the CSI in the true spirit of genuine partnership. After all, first-movers onboard the CSI pilot ports, like Singapore, had signalled their strong support for the US Customs by agreeing to cooperate on such an expensive and cumbersome initiative despite the fact that many practical difficulties of implementation still remain to be jointly ironed out. The potentially strong demonstrative or positive domino effect of such an early vote of confidence by a megaport

like Singapore for a nascent, and somewhat nebulous, initiative that has yet to find its feet, should not be lost on the US Customs Service and Transport authorities.

Besides the issue of cost burdening sharing, technology collaboration through test-bedding some of the new pre-screening technologies could be jointly carried out to increase synergy and standardise any new normative security protocols and business processes that may be adopted. This could include the joint trawling of the security technology market for rapid technology insertion of suitable systems. For example, it has been suggested that “a few places – Hong Kong and Singapore – have smart systems that the US should study as possible models.”³⁹ Singapore’s PSA’s IT unit, Portnet.com, recently clinched a S\$ 8 million deal to implement a nation-wide e-commerce port and community system for the National Ports Authority of South Africa.⁴⁰ The e-commerce system is designed to speed up cargo handling, handle electronic container data and facilitate track-and-trace services, which has the potential to improve risk profiling and enhance overall logistical visibility and security. PSA’s smart e-commerce system may well develop into a global portnet system with established nodes in different continents linking up. In another signal development, the world’s top three terminal operators – Hutchison Whampoa, PSA Corporation and P&O Ports have agreed to collaborate to demonstrate and deploy automated tracking detection and security technology for containers entering US ports. They have reportedly agreed to fund and spearhead the dockside implementation of CSI. The new initiative known as the *Smart and Secure Tradelanes* (SST) would initially employ US Defence Department technology known as Total Asset Visibility (TAV) network to track the movement and integrity of containers.⁴¹

Cost burden-sharing and technology collaboration will enhance capacity building. In time, other ports around the world outside the megaport league may also want to join in the CSI to reap the benefits of capacity building in the area of secure container handling. At the moment, it is unclear whether the developing ports see the CSI as an opportunity or a threat to their fledgling, and sometimes faltering, businesses. Rightly or wrongly, some may yet view the CSI as another obstacle put up by the US to curb their exports. The US

³⁹ Zakaria, *Op Cit*.

⁴⁰ See ‘PSA’s IT Unit Wins \$8m South African Port Deal’ in *The Straits Times* (10 Sep 02), p. A15.

⁴¹ See ‘China Will Consider having US Customs Officers at its Ports’, in *Business Times (Shipping Times)*, (19 Jul 02).

Customs CSI will therefore need, at some stage, to engage the minor ports of developing countries to cast a wider maritime security network and manage expectations/suspicious.

Secure Supply-Chain Management and Green-Lane Benefits

Notwithstanding concerns about CSI, quite a few major global shipping lines have already expressed their intentions to sign on to another parallel US Customs Service's anti-terrorism initiative – The *Customs Trade Partnership Against Terrorism* (C-TPAT). The C-TPAT is a joint US business-government initiative, whereby businesses are required to establish policies to enhance their security practices and those of their business partners along the supply chain. They include the vetting of importers and the conduct of risk assessment on service providers with the implementation of stringent security processes along and across all levels of the logistic business units. For carriers, it encompasses certifying that their port operations, vessels and computer systems are secure and that background security vetting have been conducted for key employees. The implementation vision is for firms onboard the C-TPAT programme to be given expedited processing at US ports of entry.⁴² There is implicit in the C-TPAT, the important recognition that shippers are ultimately responsible for a large part of the supply-chain and it is vital that they be made committed security stakeholders.

Aside from the 'expedited processing' for shippers under the C-TPAT programme, the US has also in tandem touted 'Green Lane' (or fast-lane access) as an advantage for CSI ports. But it will need to articulate more clearly what this entails both from the technology implementation, ground-level enforcement and policy implication angles. There is a need to clearly articulate how CSI 'Green Lane' benefits translate to tangible gains in a positive way - rather than a punitive and negative way⁴³ - such that they accord

⁴² According to US Customs, over 270 companies have signed onboard the C-TPAT since its launch in April 2002. They are also to be joined by Maersk Sealand, Evergreen America Corp, China Ocean Shipping Co (Cosco) and also NOL's APL liner division who have expressed their intentions to sign up. See report 'Major Ocean Carriers Join US Fight Against Terrorism,' in *The Shipping Times* (30 Jul 02). The US Customs has also developed new methodologies in the Regulatory Audit area such as the Importer Self-Assessment (ISA) programme which allows interested importers to assess their own compliance with US Customs laws and regulations. The ISA is primarily based on the development and use of established business practices and good internal controls designed specifically for a company's Customs operations. See Cynthia A. Covell, 'Message from The Director: US Customs Service Office of Strategic Trade Regulatory Audit Division', available at <http://www.customs.ustreas.gov/imp-expl/comply/isacover.htm>

⁴³ In dangling the CSI 'Greenlane' carrot, the US has warned that cargo arriving from non-CSI compliant ports could face greater scrutiny and delays. The positive implication being that CSI ports could gain

partner CSI ports (and C-TPAT shippers) a distinct competitive advantage over non-CSI/C-TPAT compliant ports/shippers. For example, through smart ‘reverse profiling’, CSI-compliant containers which are low risk should be ‘precleared’ and given automatic green-lane status. Only non-CSI cargo of suspect origin and with limited/unknown information should then be ‘red-laned’ for more stringent checks at US entry-ports. In addition, CSI should not erode the ‘free port’ status and efficiency currently enjoyed by mega-ports like Singapore. The fast-turn around time of transshipment containers should not be disrupted. In the end, clear green-lane incentives and specific benefits, like special preferred port status, that are up-front, consistent and transparent will go a long way in encouraging more parties to come onboard the CSI and C-TPAT programmes. This would help allay anxieties and minimise reticence for ports to be amongst the first-movers. Another important aspect the US could highlight to drive its security initiative forward is to advertise another potential benefit of a dual-layered CSI and C-TPAT system. The CSI secures the physical containers at the ports while C-TPAT screens the range of disparate service-providers/players in the supply-chain business. From a crisis recovery point of view, even if the US were to shut down the entire sea-logistics system in the event of a catastrophic terrorist attack via the maritime container trajectory it could do more to reassure its CSI partners of another first-mover advantage. In particular, it could reasonably be expected – and it should assure – that CSI ports and C-TPAT shippers would be accorded trusted preferential status and be amongst the first to resume cargo operations with the US.

On Common Turf and Dovetailing Disparate Initiatives

On the issue of leadership and responsibility, there is the need to clarify and dovetail some of the one-stop executive functions amongst the many US agencies and federal department entities involved in improving sea cargo, port and border security. This will minimise confusion and enhance the overall synergy of effort, while minimising some of the so-called ‘turf wars’ amongst the many US agencies involved in securing maritime trade security with foreign partners. The US Congress appears divided. Through the Port and Maritime Security Act passed in December 2001, the Senate had

volumes as pre-screened shipments are waved through into the US for expediency. However, even with CSI endorsement it is unlikely that the US Customs will guarantee that all pre-screened or CSI containers will not be subject to additional screening at US ports, especially if the prevailing threat conditions are dire.

given the responsibility of securing the cargo coming into US seaports to the US Customs Service. Similarly, the House Ways and Means Committee had also introduced a Customs bill which gave the US Customs Service the responsibility. However, the House Transportation Committee has assigned the Department of Transport's new Transportation Security Agency to be responsible for directing maritime and international cargo security.

Another case in point is that while CSI and C-TPAT may be US Customs Service's initiatives, there may be a need to deconflict or better synergise with other similar Federal initiatives. For instance, there have been parallel efforts by the other US Federal departments and agencies like the Department of Transport (DoT) and Department of Commerce's (DoC) Bureau of Industry and Security, and the US Coast Guard to enhance sea transport security. Some of these appear to overlap. For example, the *Smart and Secure Tradelanes* (SST) initiative with private shippers is driven by DoT. Furthermore, distinct excise/revenue collection functions and maritime security functions traditionally handled by the US Customs Service and the US Coast Guard respectively have somewhat blurred. This is, in part, the result of the US Customs Service taking on a more assertive and expanded role in enhancing US border security. There are currently unclear institutional responsibilities and overlapping mandates between the two different agencies. For example, the US House of Representative approved HR3983 (on June 4 2002) – The Maritime Transportation Antiterrorism Act – accords to the US Coast Guards an active role in assessing the security systems in certain foreign ports, and to deny entry to vessels from ports that do not maintain effective security. In addition, it calls for domestic and foreign port assessments, anti-terrorism teams and development of an anti-terrorism cargo identification system by mid-2003. HR3983 also contains a provision requiring the Under Secretary of Transportation for Security to develop a system of container cargo information to analyse shipping container information for antiterrorism purposes and to develop performance standards for shipping container security.⁴⁴ How the HR3983 Act interfaces with the US Customs CSI in implementation remains to be seen.

⁴⁴ See 'Maritime Transportation Anti-Terrorism Act Approved' in *Shipping News*, (6 Jun 02), available at <http://www.cmc-ccm.com/shipping.php?choice=352>; Frank Lo Biondo's Statement on Port Security (4 Jun 02), available at <http://www.house.gov/transportation/cgmt/lobiondo-ports-floor-statement.html>

Despite some confusion and controversy, the homogenizing and harmonizing function envisaged in the incipient Department of Homeland Security⁴⁵ may yet turn out to be a positive development. It may well go some way in dovetailing the disparate initiatives when it is established. A clear central authority driving the overall maritime/border security effort mooted by the US may yet help prospective partners to build bridges and identify the correct agencies to deal with, particularly when sharing sensitive data and proprietary information for targeting high-risk containers.

There is also the issue of jurisdiction and oversight of the US Customs Service's commercial operations and trade facilitation initiatives. The US Joint Industry Group (JIG) in its testimony to the US Senate Committee on Finance (Homeland Security and International Trade) had called for the establishment of an Under Secretary for Commercial Operations who will report to the Deputy Secretary within the Department of Homeland Security. The Under Secretary would ostensibly guarantee that the US Customs' obligation to facilitate trade would not be subsumed within an agency whose first priority is the security of US National borders. The US trade community has reasonable grounds to be concerned that insufficient attention would be given to the US Customs' traditional remit on commercial operations and trade-related functions once it is absorbed under the Homeland Security Department. In their own words, they "fear that trade facilitation will be almost entirely neglected in a department devoted entirely to security and enforcement."⁴⁶ They are also concerned that money earmarked for Customs' commercial operations and trade facilitation activities might be diverted to fund enforcement activities. While supporting the Department of Homeland Security initiative, JIG believes that the US Customs must continue to be subject to Congressional oversight by the appropriate committees with the right authority.

⁴⁵ The US House of Representatives had approved the Homeland Security Bill in July 2002, facilitating the creation of a massive Department of Homeland Security to tackle emerging terrorist threats. Before it becomes law, the House version of the Bill would have to be reconciled with the Senate's version (which was expected to be debated in September 2002). The Department of Homeland Security would be tasked with guarding the nation's borders, protecting potential targets such as transportation systems and overseeing the recovery from future attacks. The department would be anchored by agencies that include the Coast Guard, the Customs Service, the Federal Emergency Management Agency, the Transportation Security Administration and the law enforcement arm of the Immigration and Naturalisation Service. It would receive intelligence information from the FBI, the CIA and other agencies and would analyse it to issue warnings about terrorist attacks and to recommend beefing up security at potential targets. See *The Washington Post* and *New York Times*, cited in *The Sunday Times* (28 Jul 02), p. 7.

⁴⁶ See James B. Clawson 'Linking Business With Global Customs and Trade', Testimony on behalf of the Joint Industry Group before the US Senate Committee on Finance on Homeland Security and International Trade (16 Jul 02), available at finance.senate.gov/hearings/testimony/071602jctest.pdf

Apart from such bureaucratic tangles that need to be worked out, there may also be a need at some point to incorporate, harmonise and address the linkages, if any, between CSI/C-TPAT and other long-standing US initiatives like those related to the implementation of Export Control Regimes for WMD materiel, and Free Trade Agreements (FTAs).

Ultimately, who is to be in charge and who is to foot the bill for enhanced security measures will be questions that will need to be answered clearly and jointly by all partners onboard CSI and related initiatives. The debate about whether or not homeland security can indeed be outsourced⁴⁷ appears to be already *passé*, if not academic, insofar as American resolve on extending the CSI is concerned. The determination to outsource a significant proportion of container security through CSI is clear. This is manifestly the case even if the outsourcing is, strictly speaking, partial, i.e., the posting of US Customs officers at CSI port to help with advance container targeting and screening, and the fact that US ports can still be expected to actively screen suspect containers. But an even more important practical point about 'outsourcing' security is that the rest of the CSI countries should be given some pecuniary support for cost-burden sharing and capacity building to fulfil the Herculean operational demands required in effectively implementing CSI. Even on a willing partner basis, few countries can afford to underwrite security for free, for long. Outsourcing implies a contractual relationship. CSI would only be true to the spirit and letter of (limited) outsourcing if the US complements CSI with some amount of financial cache for joint capacity building and management of recurrent costs that go beyond simply green-lanes and goodwill.

Some Compass Bearings in Making Way Ahead

History will, in the end, provide a critical assessment of whether the CSI would prove to be a useful exercise in the fight against terrorism through its deterrence utility or whether it is one in futility. Perhaps, more than anything else, its true value lies in its political symbolism in reassuring the American *and* global public. This remains to be

⁴⁷ See Chua Lee Hoong, 'Homeland Security Cannot be Outsourced' in *The Straits Times* (25 Sep 02), p. 18.

seen as the final shape and substance of the CSI makes headway towards anchoring its presence around the world.

The following principle considerations could be useful for the CSI in fixing its bearings while making way ahead:

- Iterative and *phased* approach for pilot implementation, and regular joint reviews of impact on port efficiency for fine-tuning security control measures. Increased demands on data collection and screening checks should not adversely impact on trade facilitation. Adaptive solutioning and flexible protocols would make any bitter pill of CSI easier for partners to swallow.
- Close consultation and consensus amongst agencies in intelligence and information sharing to work out the required body of information for risk-management and targeting. Besides, enhancing coordination, there are issues of sovereignty and sensitive commercial information involved in allowing unfettered access to databases that will have to be managed. A streamlined or one-stop data-processing centre could help to collate and disseminate the required body of information for validation, verification and effective risk management.
- Strict rules of conduct and terms of reference for Customs officers deployed at CSI ports. Not all ports will be comfortable with letting US Custom officials dictate targeting and screening measures. The US must work closely with partner states on an agreed *modus operandi* that is effective and reasonable.
- Joint capacity-building, information exchange, cost burden-sharing and smart risk-profiling regimes will be integral to showcasing CSI as an effective and evolving global trade norm. Joint public-private sector ventures, taking into account both government-industry concerns and ideas, would help to forge a mutually-reinforcing partnership to set new security bench-marks and industry norms.

- The US Customs' CSI and C-TPAT initiatives would also have to see how the measures they seek to implement can be aligned and harmonised with other multilateral supply chain security initiatives, like those mooted by the World Customs Organization (WCO).⁴⁸ For example, expensive and extensive ideas like the use of electronic seals (e-seals) will require comprehensive international co-operation and all local and global players throughout the supply chain must be willing and able to implement any new procedures for greater success in the longer term.

Besides adhering to and working out the principles proposed above, another useful approach would be to 'trial-balloon' new ideas on CSI implementation by organising international conferences on maritime security with a keen focus on tackling the new terrorism challenges. For example, the US Chamber of Commerce organised a conference on 'Securing the Supply Chain: Logistics and the American Economy' on 24th April 2002, which brought together, for the first time, different US agencies concerned with tightening US border security. Similar ones could be jointly initiated with leading CSI pilot ports and the major global players in the shipping cargo industry. Such international conferences could be co-hosted by government agencies, think-tanks and private industry to spark off further dialogue and debate to generate more light on the way ahead for bold moves such as CSI. They would also help to develop maritime industry norms (legal regimes and 'best practices'), and provide an invaluable platform for critical expert assessments on the long-term impact of such radical measures as CSI on the future of the global shipping industry.

Conclusion: Lashing-Down Together for Choppy Seas

The forces of terror must not be allowed to paralyse or derail the juggernaut of globalisation. But in a world where threat perceptions, port capabilities and political priorities differ it would be presumptuous and *well nigh* impracticable to implement a 'one size fits all approach' when implementing CSI. Harmonisation of CSI with other extant and evolving maritime regimes will be the vision; getting there together will entail much

⁴⁸ The WCO, representing 161 countries or 97% of world trade, had adopted a supply chain security strategy in Doha, UAE in July 2002. Known as the *Trade Data Harmonization* initiative, the plan is to standardise

negotiation. In the end, there can be no silver bullet in dealing with the many different trajectories of Trojan sea(horses). CSI is about risk management. Even with CSI, every pre-screened or 'green-laned' container will still carry inherent risks. No checks can ever be completely foolproof, and successful interdiction of threat cargo will hinge largely on the effectiveness of early-warning intelligence and risk-profiling measures for screening. There is therefore a real need to temper expectations with reason. There is no perfect system that is watertight, except in a vacuum. And we all know the global village is no vacuum but quite the opposite; an inhabited space characterised by messy networks of people, information and goods that are decidedly filled with unpluggable holes of slippages and spin-offs. A fully fool-proof container screening system remains the holy grail. More surmountable will be the challenge for the US to work through a web of bilateral *and* multilateral regimes to reduce vulnerabilities by increasing visibility and tightening up security in the supply-chain of the global container logistics system. Successful CSI (and C-TPAT) implementation will ultimately rest on defining and delivering on tangible advantages for the participation of ports and shippers. It will require a balanced approach on a broad-front which matches the needs of enhanced protective security with the realities of commercial efficiency. It is perhaps ironic that Alfred Mahan's call for America to dominate the sea trade of the oceanic commons in order to secure its national power and economic interests will require more than the hard hyperpower of naval supremacy or gunboat diplomacy.⁴⁹ In the postmodern globalisation era of transnational threats to the international trading system and state security confronting many nations, it will also require the soft power of consultative leadership and patient persuasion. Such soft power, backed-up by strong partnership will help to forge a practical multilateral network of mutually-reinforcing maritime co-operative regimes that will accord clear tangible benefits and greater assurance to all players involved. In the end, consensus-building and joint capacity building through close inter-state coordination and inter-agency collaboration, not compellence, must ultimately be the order of the day for CSI success. Such a pragmatic winning partnership approach will be pivotal as more

information needed to identify high-risk shipments by June 2003. See *The Shipping Times*, (30 Jul 02).

⁴⁹ In fact, the US Bush administration aims to widen its hunt for terrorists and to cut off their weapon routes at sea by negotiating agreements with dozens of nations for new powers to police the world's waters. The plan builds on ship interdiction operations which was started largely to capture Al Qaeda members fleeing Afghanistan across international waters. It envisions giving US forces rights to hot-pursuit and board vessels not only in international waters but also in a nation's sovereign waters under some circumstances. This is, to be sure, a highly controversial proposal that will not likely go down well with many countries who guard their waters and sovereignty jealously. See AP report cited in 'US Wants New Powers to Police Oceans', in *The Sunday Times* (11 Aug 02), p. 3.

countries and captains of the shipping industry, watching carefully in the wake, decide on getting onboard with the Yanks on '*USS CSI*', to help make a historic sea change that seeks to better safeguard the global maritime trading system.

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