

KNOW YOUR CUSTOMER, DUE DILIGENCE AND MARITIME SUPPLY CHAIN INTEGRITY

Best Practices under the Declaration of Intent to Prevent the Maritime Transportation of Counterfeit Goods

INTRODUCTION

In November 2016, as part of efforts to combat the transportation of counterfeit goods, Brand Owners, vessels operators, and Freight Forwarders came together to sign a Declaration of Intent (“DOI”) to prevent the maritime transportation of counterfeit goods.

From that point, signatories have worked together intensively to develop voluntary guidelines in various areas to tackle the issue of counterfeit goods within the supply chain including “Best Practices in Know Your Customer (“KYC Best Practices”) for Maritime Operators” initially published in March 2018.

This paper incorporates the original KYC Best Practices to which further voluntary recommended best practices have been added which Maritime Operators, Brand Owners, and Suppliers can, acting independently and voluntarily, use as a first step to tackle the issue of counterfeit goods within the supply chain.

Maritime Operators, Brand Owners and Suppliers, acting independently and voluntarily, may decide as to whether and with whom they are doing business and who they independently choose to discontinue doing business with, subject to relevant laws.

DEFINITIONS

This document defines the terms below as follows:

Brand Owner is defined as:

Any entity having the authority to make and sell products and / or services under its registered intellectual property rights and that uses the services of Maritime Operators to transport or procure the transportation of their Products.

Maritime Operator is defined as:

Any entity that provides services in the Maritime Supply Chain.

Maritime Supply Chain is defined as:

A series of activities and associated transactions that result in the physical transportation of the Products which includes at least one movement across a body of water in a vessel of any type.

Product is defined as those made by the Brand Owners, including components and/or materials.

Supplier is defined as:

Any entity which supplies services to Maritime Operators and Brand Owners within the Maritime Supply Chain, including but not limited to:

- > Ship owners/operators and representatives
- > Haulage Providers – Road, Rail, Barge
- > Warehouse Operators
- > Terminal Operators
- > Freight Forwarders
- > Customs Brokers

BEST PRACTICES

To ensure that Maritime Operators engage with legitimate customers who are not involved in illicit trade, they should:

1 Verify the identity of a potential customer by:

- > checking the customer's legal existence and confirming its registered address;
 - > looking into its registrations, for example VAT number, online footprint, legitimate bank account, etc.; and
 - > using dedicated databases, for example sources that provide data and information for credit reference checks and further verification.
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To ensure observance of these best practices, Maritime Operators should:

2 Perform due diligence and ongoing monitoring of their established customers, undertaking new checks upon the occurrence of any of the following factors:

- > Changes in OFAC Specially Designated Nationals List whether for individuals, companies or goods shipped.
 - > Significant changes to a customer's behaviour, including failure to pay bills and / or errors in documentation.
 - > Any relevant negative report by reputable media or press, and/or convictions against such customer for counterfeit or similar (criminal) offences that the Maritime Operator becomes aware of, as independently assessed by the Maritime Operator in accordance with its own business standards.
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To further evaluate potentially high-risk shipments, Maritime Operators should:

3 Identify possible counterfeit shipments by:

- Using keyword search and/or usual suspicious routes in their risk profiling to identify shipments with a higher risk of containing counterfeit products throughout the transaction process, including at the point of booking¹.
- Identifying suspected high-risk customers/shipments on the basis of the following factors:
 - > ports of origin and destination of the shipment
 - > whether it is a first-time customer or it is the customer's first time shipping to a certain destination
 - > whether the cargo's nature is in line with the customer's stated business
 - > whether the customer has been previously convicted of transporting counterfeit goods or otherwise involved in illicit trade
 - > This is to the extent that the Maritime Operator has their own information about any such involvement or the Maritime Operator has been informed by a third party based on official documents (e.g., judgments from a competent court, orders from a law enforcement agency or other competent public authority, etc.).

¹ Each Brand Owner may inform a Maritime Operator on which keywords/routes they consider can be best used for assessing the risks.

4 Review suspected high-risk customers through further validation processes and documenting the outcome of this review with reasons provided for the decision.²

Following review of potential high-risk customers, the Maritime Operator, acting independently and voluntarily, may decide on certain remedies in relation to such customer. This should be decided on a case-by-case basis and may include termination of the contract to transport/not entering into business with the customer. In particular:

5 a) Pre-booking

After conducting the checks in Clause 1 and should there be red flags, the Maritime Operator should independently and voluntarily decide on how to deal with the customer.

b) Post-booking

If there is cause for concern after conducting the checks in Clauses 3 and/or 4, the Maritime Operator should independently and voluntarily decide whether to continue with the business relationship with the customer and should decide, at its own discretion, if the contract to transport may be terminated.

To directly convey to all customers their policy against the shipment of counterfeit goods, Maritime Operators should:

- 6** a) Use their best efforts to ensure that they independently review their own terms of carriage to include their own internal policy (or policies) against transportation of counterfeit goods.
- b) To the extent permitted by law, Maritime Operators should reserve their right to waive confidentiality in information provided by the customer and to disclose it to law enforcement agencies and/or the Brand Owner whose rights have been infringed.

To directly convey to their relevant Suppliers any internal policy/ies which they may have established against the shipment of counterfeit goods, Maritime Operators and Brand Owners should:

- 7** a) Use their best efforts to ensure that they independently review their own contracts with Suppliers to reflect their own internal policy/ies on the transportation of counterfeit goods.
- b) To the extent permitted by law, reserve their right to waive confidentiality in information provided by Suppliers and to disclose it to law enforcement agencies and/or the Brand Owner whose intellectual property rights have been infringed.
- c) To encourage their Suppliers to tackle the issue of illicit trade, inform their Suppliers about these recommended Best Practices.

² Methods of validation may include reference checks, checks with agreed points of contacts in Brand Owners to confirm if a company may be associated with the Brand Owner, telephone calls, site visits, and inspections.