



11.2. Legal considerations

Among other administrative arrangements, WCO tools such as the Johannesburg Convention and the Model Bilateral Agreement make it possible for a Customs administration to request another Customs administration to carry out such an activity.

3.3 Seal Integrity for Secure Containers

Importance of specifying security relationships

Greater clarity and consensus about the relationships among the parties in the movement of secure containerized goods, coupled with consistent application and enforcement of those relationships, will provide multiple benefits to all of those parties. These benefits include :

- Improved security against acts of terrorism that exploit the global trade in goods.
- Reduced risk of economic hardship caused by disruptions to or closures of trade in response to terrorist acts.
- Improved security against theft and diversion of cargo, with consequent reductions in direct losses and indirect costs, such as insurance.
- Improved security against illegal transport of materials such as narcotics and weapons, and of persons.
- Improved security against the illegal movement of "black market" and "grey market" trade goods.
- Reduced risk of evasion of duties and taxes.
- Increased confidence in international trading systems by current and potential shippers of goods.
- Facilitation dividends, such as a reduced number of examinations (reduced border times) and access to simplified procedures.

Responsibilities along the chain of custody

A. Cross-cutting responsibilities

There are responsibilities and principles that apply throughout the life cycle of a containerized shipment of goods. The emphasis is on the relationships among parties upon changes in the custody or possession of the container. That emphasis does not reduce and should not obscure the fundamental responsibility of the shipper for the safe and secure stuffing and sealing of the container. Each party in possession of the container has security responsibilities while cargo is entrusted to them, whether at rest at a node or while moving between nodes. Each party with data that needs to be filed with the government for Customs and security screening purposes has responsibilities. Those responsibilities include :

- Protecting the physical goods from tampering, theft, and damage.
- Providing appropriate information to government authorities in a timely and accurate manner for security screening purposes.

- Protecting the information related to the goods from tampering and unauthorized access. This responsibility applies equally to times before, during and after having custody of the goods.

Security seals are an integral part of the chain of custody. The proper grade and application of the security seal is addressed below. Security seals should be inspected by the receiving party at each change of custody for a cargo-laden container. Inspecting a seal requires visual check for signs of tampering, comparison of the seal's identification number with the cargo documentation, and noting the inspection in the appropriate documentation. If the seal is missing, or shows signs of tampering, or shows a different identification number than the cargo documentation, then a number of actions are necessary :

The receiving party must bring the discrepancy to the attention of the party tendering the container and the shipper. The receiving party must note the discrepancy on the cargo documentation. The receiving party should notify Customs or law enforcement agencies, in accordance with national legislation. Where no such notification requirements exist, the receiving party shall refuse custody of the container pending communication with the party tendering the container and until such discrepancies can be resolved. Once discrepancies have been resolved, the receiving party shall affix a security seal to the container and note the particulars, including the new seal number, on all pertinent cargo documentation.

Security seals may be changed on a container for legitimate reasons. Examples include inspections by an exporting Customs administration to verify compliance with export regulations; by a carrier to ensure safe blocking and bracing of the lading; by an importing Customs administration to confirm cargo declarations; and by law enforcement officials concerned with other regulatory or criminal issues.

If public or private officials should remove a security seal to inspect the lading, they will install a replacement in a manner that meets the requirements specified below, and note the particulars of the action, including the new seal number, on the cargo documentation.

B. Stuffing site

The shipper/consignor is responsible for securely stuffing the container and for the accurate and complete description of the cargo. The shipper is also responsible for affixing the cargo security seal immediately upon the conclusion of the stuffing process, and for preparing documentation for the shipment, including the seal number.

The cargo security seal should be compliant with the definition of high-security mechanical seals in ISO 17712. The seal should be applied to the container in a manner that avoids the vulnerability of the traditional container door handle seal location to surreptitious tampering. Among the acceptable ways to do this are alternative seal locations that prevent swivelling of an outer door locking cam or the use of equivalent tamper evident measures, such as cable seals across the door locking bars.

The land transport operator picks up the load. The transport operator receives the documentation, inspects the seal and notes the condition on the documentation, and departs with the load.



C. Intermediate terminal

If the container movement is via an intermediate terminal, then the land transport operator transfers custody of the container to the terminal operator. The terminal operator receives the documentation, inspects the seal and notes the condition on the documentation. Normally, the terminal operator sends an electronic notification of receipt (status report) to other private parties to the shipment. The terminal operator prepares or stages the container for its next movement, which could be by road, rail or barge. Similar verification and documentation processes take place upon pickup or departure of the container from the intermediate terminal. It is rare that public sector agencies are involved in or informed about intermodal transfers at intermediate terminals.

D. Loading ocean terminal

Upon arrival at the loading ocean terminal, the land transport operator transfers custody of the container to the terminal operator. The terminal operator receives the documentation and normally sends an electronic notification of receipt (status report) to other private parties to the shipment. The terminal operator prepares or stages the container for loading upon the ocean vessel.

The carrier or the ocean terminal as agent for the carrier inspects the condition of the seal, and notes it accordingly; this may be done at the ocean terminal gate or after entry to the terminal but before the container is loaded on the ship. Public agencies in the exporting nation review export documentation and undertake necessary export control and provide safety certifications. The Customs administrations that require advance information receive that information, review it, and either approve the container for loading (explicitly or tacitly) or issue "do not load" messages for containers that cannot be loaded pending further screening, including possible inspection.

For those countries that have export declaration and screening requirements, the carrier should require from the shipper documentation that the shipper has complied with the relevant requirements before loading the cargo for export. (The shipper/consignor is, however, responsible for compliance with all prevailing documentation and other pertinent export requirements.) Where applicable, the ocean carrier must file its manifest information to those importing Customs agencies that require such information. Shipments for which "do-not-load" messages have been issued should not be loaded onboard the vessel pending further screening.

E. Transshipment terminal

The transshipment terminal operator shall inspect the security seal between the off-loading and re-loading of the container. This requirement may be waived for transshipment terminals which have security plans that conform to the International Ship and Port Facility Security Code (ISPS Code produced by the International Maritime Organization).

F. Off-loading ocean terminal

The receiver/consignee usually arranges for a Customs broker to facilitate clearance of the shipment in the off-loading ocean terminal. Generally, this requires that the cargo owner provide documentation to the broker in advance of arrival.

The ocean carrier provides advance electronic cargo manifest information to the terminal operator and to the importing Customs administration as required. Customs may select containers for different levels of inspection immediately upon off-loading or later. Customs may inspect the condition of the seal and related documentation in addition to the cargo itself. If the container is to travel under Customs control to another location for clearance, then Customs at the off-loading terminal must affix a Customs seal to the container and note the documentation accordingly.

The receiver/consignee or Customs broker pays any duties and taxes due to Customs and arranges the Customs release of the shipment. Upon pickup for departure from the ocean terminal, the land transport operator inspects and notes the condition of the seal, and receives documentation from the terminal operator.

G. Intermediate terminal

The processes in intermediate terminals in the importing country are analogous to those in intermediate terminals in exporting countries.

H. Unloading site

Upon receipt of the container, the consignee or deconsolidator inspects the seal and notes any discrepancy on the documentation. The consignee unloads the container and verifies the count and condition of the lading against the documentation. If there is a shortage, damage, or an overage discrepancy, it is noted for claims or insurance purposes, and the shipment and its documentation are subject to audit and review. If there is an anomaly related to narcotics, contraband, stowaways or suspicious materials, the consignee Customs or another law enforcement agency must be informed.