

KNOW YOUR CUSTOMER

Best Practices for Maritime Operators 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, BASCAP member-companies, 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 “best practices” in various areas for operators throughout the maritime industry to tackle the issue of counterfeit goods within the supply chain.

This “Best Practices in Know Your Customer (KYC) for Maritime Operators” paper provides voluntary and recommended practices by which Maritime Operators can work as a first step to ensure that their customers are engaged in legitimate trade.

This document defines a Maritime Operator as:

- > Any entity that provides services in the maritime supply chain.
- > Maritime operators, 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.

KYC BEST PRACTICES

To ensure that Maritime Operators are engaging with only 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.
 - > Using dedicated databases, for example sources that provide data and information for credit reference checks and further verification.
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To ensure that these best practices are observed, Maritime Operators should:

2 Perform due diligence and ongoing monitoring of their established customers.
(criteria to be published by April 2018)

To further evaluate potentially high-risk shipments, Maritime Operators should:

3 Identify possible counterfeit shipments by:

- a) 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.

¹ Each brand owner may inform a maritime operator on which keywords/routes they consider can be best used for assessing the risks.

- b) Identifying suspected high-risk customers/shipments on the basis of the following factors:
- > The ports of origin and destination of the shipment
 - > Is it a first-time customer, or is it the customer's first time shipping to a certain destination?
 - > Is the cargo's nature in line with the customer's stated business?
 - > Has the customer been previously convicted of having shipped 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.).

4 Reviewing suspected high-risk customers through further validation processes and documenting the outcome of this review with reasons provided for the decision¹

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.

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

Use their best efforts to ensure they independently review their own terms of carriage to convey to customers their policy (or policies) on transportation of counterfeit goods.

The Maritime Operator reserves its right to waive confidentiality in information provided by the shipper and to disclose it to law enforcement agencies and/or the intellectual property owner whose rights have been infringed.

7 Drafting Notes: For possible future inclusion in the KYC Best Practices

The following provisions will be considered in the next few months and discussed for possible inclusion at a later date. The points set out below are draft, high-level principles and any future principles must comply with relevant laws, including competition laws:

- > Reporting to law enforcement
- > Customer's processes
- > Other potential factors to identify high risk customers/shipments e.g. FTZ, routes for certain cargo, any others.

¹ Methods of validation may include reference checks, telephone calls, site visits, and inspections.