



## Ports: security

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This note looks at security arrangements that have been put in place both in the UK and at an international level to protect ports and shipping interests when in port. It also looks briefly at the changes made by the United States Government to the scanning of ships in foreign ports.

Information on other ports- and shipping-related issues can be found on the [Shipping Topical Page](#) on the Parliament website. The issue of piracy and armed robbery at sea is dealt with in a separate standard note: [SN/BT/3794](#).

### Contents

<b>1</b>	<b>Transec and the National Maritime Security Programme</b>	<b>2</b>
<b>2</b>	<b>Ports policing</b>	<b>3</b>
<b>3</b>	<b>International Maritime Organization (IMO)</b>	<b>5</b>
3.1	International Ship and Port Facility Security (ISPS) Code	6
3.2	ILO/IMO Code of practice on security in ports	8
<b>4</b>	<b>European Commission</b>	<b>8</b>
4.1	Ship and Port Facility Security Regulation 2004	8
4.2	Port Security Directive 2005	9
<b>5</b>	<b>Changes to US law: scanning at international ports</b>	<b>11</b>

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# 1 Transec and the National Maritime Security Programme

The role of [Transec](#), the Department for Transport's Transport Security and Contingencies Directorate, is:

[to] protect the travelling public, transport facilities and those employed in the transport industries, primarily from acts of terrorism, and to retain public confidence in transport security, whilst not imposing requirements that impact disproportionately on the travelling public or on the effectiveness and efficiency of industry operations; and to co-ordinate the DfT's arrangements for responding to serious disruption of national life, actual or threatened, however caused.<sup>1</sup>

Transec was established in 1991, following the Lockerbie disaster, as a replacement for the Aviation Security Division of the then Department of Transport. Its responsibilities were extended to include maritime security in the 1990s, then further extended to include the Channel Tunnel. Since 2000, it has had oversight of national rail, London Underground, and the Docklands Light Railway. Since 2005, it has also had responsibility for the Glasgow Subway and the security of dangerous goods in transit.

In terms of budget, Transec's 2009-10 annual report gives the following information:

We spent £25.7m during the year. Expenditure in 2009–10 and during the previous year is summarised in Table A.1.

	2009–10 £000	2008–09 £000
Staff costs	14,713	11,417
Delivery programmes	10,486	9,145
Capital programmes	188	247
Non-cash	272	184
<b>Total expenditure</b>	<b>25,659</b>	<b>20,993</b>

[...]

The increase in expenditure during 2009–10 over the previous year was due primarily to additional spending on new crosscutting work programmes, such as the Olympics transport security and the personnel security programmes, and on a comprehensive programme to improve the Directorate's compliance capabilities (the compliance improvement programme).<sup>2</sup>

Security on all transport modes has been of particular concern since September 11 2001 when four civilian airliners were hijacked by 19 al-Qaeda operatives and flown into major United States landmarks, destroying the two World Trade Center towers in New York and damaging the Pentagon in Washington. The fourth plane crashed in Pennsylvania. Two thousand, nine hundred and seventy-six people were killed in the attacks.<sup>3</sup>

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<sup>1</sup> Transport Committee, *UK Transport Security – preliminary report* (first report of session 2005-06), HC 637, 30 November 2005, Ev 1

<sup>2</sup> DfT, *TRANSEC Annual Report April 2009–March 2010*, Cm 7941, September 2010, Annex A

<sup>3</sup> for more information on international terrorism and al-Qaeda, see Library Standard Note [SN/IA/3716](#)

Since September 11 the successive governments have been keen to co-operate with international organisations in establishing a hard line against terrorism. In January 2003 the then Minister for Transport told the House of Commons that:

The United Kingdom already has a comprehensive security regime in place covering ports and harbours which service international ferries and cruise ship calls. In addition, the three border agencies, police Special Branch, HM Customs and Excise and the Immigration Service, control the movement of passengers and goods through small ports. Their presence at the ports is determined by a risk assessment.

This national regime will be augmented by July 2004 with the implementation of the recently agreed International Maritime Organisation's (IMO) global maritime security regime. This agreement requires signatory nations to develop and implement maritime security procedures. All ships over 500 tons engaged in international voyages and all ports which service such ships will be party to the security requirements.<sup>4</sup>

In the UK, implementation of the IMO requirements, the EU Regulation (see below) and other security requirements for domestic shipping, form part of the National Maritime Security Programme (NMSP). This programme brings together the UK's existing maritime security regime and the various international and European initiatives to provide a comprehensive protective security regime for UK ships and ports. The National Maritime Security Committee (NMSC) meets regularly to act as a forum for consultation between the government, the maritime industry and staff representatives on the implications of the government's existing and proposed maritime security policies and through its shipping and ports sub-committees, the development and implementation of those policies. In 2009 the Labour Government set up the National Maritime Information Centre (NMIC):

Work on the national maritime security strategy is based on the premise that the UK can strengthen its response to potential maritime incidents through the integration and central coordination of maritime surveillance. To achieve this end, a start has been made to establish a National Maritime Information Centre (NMIC) based at the Ministry of Defence's joint headquarters in Northwood.

The NMIC will bring together key agencies responsible for maritime safety, security and environmental protection. Based together in one centre, they will develop and monitor a coherent picture and shared understanding of maritime activity around the UK and its overseas territories. The involvement of DfT and Maritime and Coastguard Agency (MCA) is vital to this initiative.<sup>5</sup>

Further information on the NMSP can be found on the [Department for Transport website](#).

## 2 Ports policing

The majority of ports are policed by the local Home Office forces, which do not provide a dedicated service but respond to incidents when called. Eight ports operate their own, independent forces (Bristol, Dover, Falmouth, Felixstowe, Liverpool, Portland, Teesport, and Tilbury). These forces are described as follows:

Today's port police forces vary in size from nearly 50 officers at Dover and Liverpool to 4 at Falmouth. Collectively, however, these ports account for over 40 per cent of the UK's non-oil traffic, which means their police are in contact with and potentially guardians of millions of pounds worth of traded goods every year.

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<sup>4</sup> HC Deb 9 January 2003, c292W

<sup>5</sup> op cit., *TRANSEC Annual Report April 2009–March 2010*, paras 3.12-3.13

Each force is led by a chief officer who is able to participate in the work of the Port Police Chief Officers Association (PPCOA) which meets regularly to discuss matters of common interest. Chief Officers or members of their forces may also cover the role of Port Facility Security Officer as provided for by International Ship and Port Security Code 2004 (ISPS). Most forces include some civilian staff and they may also be responsible for security personnel within the port.<sup>6</sup>

In terms of the constables themselves:

Port police powers are not wholly equivalent to those of the modern "police officer". Port police forces consist of constables sworn in by magistrates on the nomination of the port. A constable is a common law term, and all police officers, including Home Office police officers, are constables. Home Office police officers may, however, have additional statutory powers not held by port police officers under legislation that is applicable only to them.

Unlike Home Office police, port police constables are appointed under legislation that incorporates Section 79 of the Harbours Docks and Piers Clauses Act 1847 (HDPCA), or a similar provision into other legislation specific to a particular port. The HDPCA legislation ... provides the power for any two Justices to appoint any persons nominated by the statutory undertakers (the port authority) to be "special constables" within the limits of the harbour, dock or pier and the premises of the undertakers and within one mile beyond (however this limit can vary depending on the local act). The HDPCA states that such constables "shall have the same powers, protections and privileges and be subject to the same liabilities as constables have or are subject to by the laws of the realm." Section 80 of the HDPCA also provides a power for any two Justices to dismiss any constable appointed under Section 79. At Dover, the power for Justices to dismiss constables under section 80 (HDPCA) has been adapted so that the dismissal from the office of Constable is automatic if the Harbour Board, as a statutory undertaker, dismisses a constable from its employment.

There are two important points of clarification of the term "constable":

In the most general context a "constable" is usually taken to refer to the lowest rank in the police service. However the purposes of legislation, legal powers and jurisdiction "constable" includes all officers of any rank.

Some confusion can also be caused by the fact that the HDPCA refers to 'special constables'. This term is also used of the special constables of Home Office police forces who are part-time and unpaid volunteers coming under the direction and control of the chief constable of the force concerned.<sup>7</sup>

Following several years' of consultation a review of ports policing was published in 2008. This concluded that despite their somewhat curious independent status, port police forces have not become an historical anomaly but have modernised to emulate Home Office forces. Further, the question of whether ports should have their own police forces at all should remain a matter for the individual port authorities. On that last point, whilst the railways do have a dedicated police force, the [British Transport Police \(BTP\)](#), some have suggested that their remit should be extended to provide dedicated transport policing to airports and ports. In evidence to the Transport Select Committee, the BTP's Chief Constable, Ian Johnston thought that the BTP could add value to policing at ports – particularly major hubs such as

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<sup>6</sup> DfT, [Accountability and Standards of the Port Police Forces](#), June 2008

<sup>7</sup> *ibid.*

Dover. However, he also stated that the BTP's focus should remain on the railways for the time being.<sup>8</sup>

In addition, the 2008 report made the following specific recommendations:

R1: To the extent that port police forces are making proper and effective use of their powers and fulfil a valuable role they deserve the full support of port management and of local police forces.

R2: Port police forces should aim to put in place a memorandum of understanding with the appropriate Home Office county force covering the types of issue set out in the example at [Annex D](#).

R3: It is for each force and port authority to work out its own model and structure for operations. But there is no case at present for trying to harmonise powers or activities.

R4: Port police forces should have regard to the recruitment criteria set out in the Home Office National Recruitment Standards. Whilst not all the elements are appropriate to port police forces, the criteria will provide quality assurance and set a level playing field for the port police forces.

R5: For the purpose of drawing up a standard framework for a training programme the Chief Officers, in collaboration with their port authorities, the Home Office (and the NPIA) should identify best practice against the background of Home Office guidelines and current legislation.

R6: Port authorities that deploy uniformed constables on very limited functions such as purely gate-keeping should consider either equipping them with the appropriate training or replacing them with security personnel.

R7: Department for Transport should, in consultation with all stakeholders, explore means of changing the legislation to widen the jurisdiction prescribed in current legislation for members of port police forces to operate outside their ports.

R8: Port authorities should consider involving persons from outside the port authority in their monitoring role for the port police. As with territorial police authorities such persons might be members of local government, magistrates, other prominent members of the community.

R9: Port police forces should make full use of internet web sites and consider the potential value of producing an annual report.<sup>9</sup>

The Conservative-Liberal Democrat Coalition Government that took office in May 2010 has stated that it has no plans to reform ports police, except with regards to those involved in border duties.<sup>10</sup>

### **3 International Maritime Organization (IMO)**

Maritime security is an integral part of the [IMO's](#) responsibilities. A comprehensive security regime for international shipping entered into force on 1 July 2004. The mandatory security measures, adopted in December 2002, include a number of amendments to the [International](#)

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<sup>8</sup> Transport Committee, [Future of the British Transport Police](#) (fifth report of session 2005-06), HC 1070, 16 May 2006, Q27

<sup>9</sup> op cit., [Accountability and Standards of the Port Police Forces](#)

<sup>10</sup> [HC Deb 15 June 2010, c286W](#); and: [HC Deb 29 November 2010, c508W](#); for more information on border policing, see section 5.6 of HC Library research paper [RP 11/10](#)

*Convention for the Safety of Life at Sea 1974 (SOLAS)*, the most far-reaching of which enshrines the *International Ship and Port Facility Security Code (ISPS Code)*, which contains detailed security-related requirements for governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B).

### **3.1 International Ship and Port Facility Security (ISPS) Code**

The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States. The ISPS Code is implemented through Chapter XI-2 special measures to enhance maritime security in SOLAS. The Code has two parts, one mandatory and one recommendatory. In essence, the Code takes the approach that ensuring the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.

The purpose of the Code is to provide a standardised, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.

There are three security levels set out in the ISPS Code:

- **Security level 1:** normal, the level at which the ship or port facility normally operates. Security level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times.
- **Security level 2:** heightened, the level applying for as long as there is a heightened risk of a security incident. Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident.
- **Security level 3:** exceptional, the level applying for the period of time when there is the probable or imminent risk of a security incident. Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

Setting security level 3 should be an exceptional measure applying only when there is credible information that a security incident is probable or imminent. Security level 3 should only be set for the duration of the identified security threat or actual security incident. While the security levels may change from security level 1, through security level 2 to security level 3, it is also possible that the security levels will change directly from security level 1 to security level 3.

The Code came into force in the UK on 1 July 2004 under the *Ship and port facility (security) regulations 2004 (SI 2004/1495)*. Since then, the government has been obliged to address all the objectives and functional requirements of the ISPS Code and to ensure that appropriate security measures and procedures are in place in the port facilities and waterways across the UK. The then Transport Minister explained in 2004 what measures the UK was taking to comply with the Code and to prepare the UK for implementation:

The Department for Transport's Transport Security Directorate (TRANSEC) in conjunction with the Maritime and Coastguard Agency (MCA) are responsible for introducing the ISPS Code requirements. Operationally TRANSEC is responsible for UK ports and passenger shipping, and MCA is responsible for non-passenger shipping, under a policy framework set by TRANSEC.

The UK has developed five port facility Protection Categories, based on traffic type, such as Passenger, Container Ro-Ro, Other Bulk Cargo, and has developed category specific security measures which are designed to reduce any existing vulnerabilities at these port facilities.

All of the major UK ports including the passenger operations have been assessed and Port Facility Security Assessment (PFSA) Reports have been prepared. Along with the individual PFSA reports, industry has been provided with category specific Port Facility Security Instructions and Security Standards. These will form the basis of their Port Facility Security Plans. A Port Facility Security Plan template has also been made available to assist companies prepare their plans, which are then submitted for approval.

Clear guidelines and deadlines have been issued to industry to submit their Ship Security Plans to TRANSEC for passenger ships, and the MCA for non-passenger ships, for examination and approval. Once a plan has been approved, it must be verified on board the ship prior to issuing an International Ship Security Certificate (ISSC).

It is up to individual port facilities and flag vessels to comply with the programme for submission we have set out. TRANSEC and MCA staff are already approving Port Facility Security Plans and issuing International Ship Security Certificates and the Government expect all UK port facilities and flagged ships will comply with the required ISPS standards by the deadline.<sup>11</sup>

The Minister also outlined the role of the government in overseeing the implementation of the Code and its role following implementation:

The Department for Transport is the Designated Authority to oversee the implementation and compliance of the International Ship and Port Security (ISPS) Code in the United Kingdom.

Reporting directly to the Secretary of State, the Department for Transport's Transport Security Directorate (Transec) has the policy lead and is responsible for introducing the ISPS Code requirements to approximately 600 UK port facilities and over 600 UK flagged ships by the deadline of the 1 July 2004. Operationally Transec is responsible for UK ports and passenger shipping, and the Maritime and Coastguard Agency (MCA) has been delegated responsibility for non-passenger shipping, under a policy framework set by Transec.<sup>12</sup>

While the government has not provided financial assistance for ports and/or ship operators to implement the Code, it is providing expertise and guidance and absorbing the cost of security checks (through the [Maritime and Coastguard Agency](#) and Transec).<sup>13</sup>

The Labour Government published an interim report of its ports policy review in July 2007. It had this to say on the enforcement of the ISPS Code:

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<sup>11</sup> [HC Deb 31 March 2004, c1408W](#)

<sup>12</sup> [HC Deb 29 March 2004, c1164W](#)

<sup>13</sup> [HL Deb 17 March 2004, cc57-58WA](#)

The significantly tighter standards in ISPS have been fully accepted by the UK industry, and wholly funded by it and its customers. DfT's Transport Security and Contingencies Directorate (TRANSEC) has now approved port facility security plans covering some 550 individual port facilities in the UK. The UK regime has been sufficiently rigorous to accommodate the recently adopted EC Directive which enhances security throughout ports, and which the UK is now implementing as an extension of the NMSP and the drafting of transposing regulations.

There is well-established and effective dialogue between the Department and the ports and shipping industries, and frequent consultation on implementation takes place both at national level and as part of the programme of compliance inspection and DfT participation in port security committees.

We want to help the industry deliver on its undoubted commitment to achieve the highest necessary levels of port security. Implementation at individual port level will depend on local circumstances, and the tools available to the port.<sup>14</sup>

### **3.2 ILO/IMO Code of practice on security in ports**

The [ILO/IMO Code of Practice on security in ports](#), which complements the provisions of the ISPS Code with respect to security of the wider port area, was approved by the Governing Body of the International Labor Organization (ILO) at its 289th session in March 2004 and was approved by the IMO Maritime Safety Committee (MSC) at its seventy-eighth session.

While the Code of Practice is not a legally binding instrument and is not intended to replace national laws and regulations, the recommendations contained in the Code have been designed to provide guidance to all those responsible for addressing the issue of security in ports. The Code is intended to assist in the identification of the roles and responsibilities of governments, employers and workers. The code provides a proactive approach to security in ports and follows, where practicable, the practice and principles identified in SOLAS Chapter XI-2 and the ISPS Code.

## **4 European Commission**

### **4.1 Ship and Port Facility Security Regulation 2004**

The European Commission's main proposal to deal with terrorism and security at ports and at sea after 9/11 was published in May 2003. The requirements proposed by the Commission with regard to security assessments, the drawing-up of security plans and the designation of company and ship security officers apply to domestic as well as international traffic. The Regulation also envisaged a process of inspections supervised by the Commission to verify the harmonised implementation of these new security rules throughout the EU.<sup>15</sup>

The Commission's Communication went further than the IMO framework and opened up the debate on the security of maritime transport to address port zones as a whole, the identification of seafarers, and also the security of the whole inter-modal transport chain. The Regulation went beyond the measures adopted by IMO in that it aimed to:

- Make obligatory some requirements that are only recommendations, in order to raise the level of security sought and to avoid divergences of interpretation between Member States;

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<sup>14</sup> DfT, [Ports policy review – interim report](#), July 2007, para 34

<sup>15</sup> [COM\(2003\) 229 final](#), 2 May 2003



- Require a national authority to be responsible for the security of ships and port installations, and also a swifter timetable for implementation of some of the terms of the regulation than foreseen by the IMO agreement;
- Foresee an inspection process supervised by the Commission to verify the means of control and the implementation of national plans adopted within the framework of the Regulation;
- Give the [European Maritime Safety Agency \(EMSA\)](#) a role in assisting the Commission in the execution of its tasks;
- Adapt various terms adopted in the IMO framework to the benefit of the national maritime traffic within Member States;
- Extend all the requirements of Chapter XI-2 of the SOLAS Convention and Part A of the *ISPS Code* to passenger ships on national routes where they sail further than 20 nautical miles beyond the coasts; and
- Extend to other ships sailing nationally the requirements of the texts relating to undertaking safety evaluations, establishing safety plans, and designating safety agents for companies and for ships.

The communication resulted in [Regulation 725/2004/EC](#) on enhancing ship and port facility security, published in March 2004. It was implemented in the UK on 1 July 2004 by the *Ship and port facility (security) regulations 2004 (SI 2004/1495)*. The then Minister outlined the anticipated effect of the Regulation in response to a Parliamentary Question in March 2006:

...On 1 July 2004, The Department for Transport fully implemented EC Regulation 725/2004 on enhancing Ship and Port Facility Security. It aims to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships. The regulation provides for a comprehensive system of physical and procedural security measures at about 550 UK Port Facilities. These are aimed in part at deterring and preventing the threat of terrorism, including the use of hazardous materials in such attacks, in our ports and harbours.<sup>16</sup>

#### **4.2 Port Security Directive 2005**

In May 2004 the Commission made a further proposal for a Maritime Security Directive to complement the Regulation.<sup>17</sup> Taken together, it was intended that the Port Security Directive and the Ship and Port Facility Security Regulation would provide the necessary framework for protecting the whole chain of maritime transport logistics (from the ship to the port via the ship/port interface and the whole port area) against the risk of attacks on Community territory. This proposal resulted in [Directive 2005/65/EC](#) on enhancing port security and was signed on 26 October 2005, to be implemented in Member States by 15 June 2007, with an obligation to publish by December 2008 and once every five years afterwards an evaluation report on the implementation of the Directive.

The Directive applies to people, infrastructure and equipment (including means of transport) in ports and adjacent areas. Under the Directive, Member States must designate a port security authority for each port. This authority is responsible for identifying and taking the necessary port security measures in line with port security assessments and plans, for ports

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<sup>16</sup> [HC Deb 22 March 2006, cc382-3W](#)

<sup>17</sup> [COM \(2004\) 076 final](#), 28 May 2004

subject to the provisions of the proposed Directive. Member States must also ensure that port security plans are developed, maintained and updated, with a detailed description of the measures taken to enhance port security (such as the conditions of access to ports or the measures applicable to baggage and cargo). Security plans must be monitored, with specific penalties for non-conformity.

The Directive establishes different security levels in line with the perceived risk (normal, heightened or imminent threat), namely:

- **Security level 1:** the level for which minimum protective security measures must be maintained at all times;
- **Security level 2:** the level for which appropriate additional protective security measures must be maintained for a period of time as a result of heightened risk of security incident; and
- **Security level 3:** the level for which further specific protective security measures must be maintained for a limited period of time when a security incident is probable, although it may not be possible to identify the specific target.

At each port the security level in force, and any changes to it, must be communicated. In addition, each port must have a different port security officer who will act as the contact point for port security related issues and should have sufficient authority and local knowledge to adequately ensure and coordinate the establishment, updating and follow-up of port security assessments and port security plans. Port security committees should also be established to provide practical advice in the ports covered by the Directive, unless the specificity of a port renders such a committee superfluous. The membership of the port security committee may vary between ports, but should always reflect the operational and public authority functions in a port.

Member States must ensure that port security assessments and port security plans are reviewed every time security-relevant changes occur, and at least every five years. There should also be a designated 'focal point' for maritime security and the security of port facilities who must communicate to the Commission the list of ports concerned by the proposed Directive and maintain a list of the contact details of the port security authorities.

In April 2008 the Department for Transport published a consultation on proposed draft port security regulations to implement the 2005 Directive in the UK.<sup>18</sup> At the same time the DfT was working with three port areas as 'pilot ports', to assist in testing the requirements of the proposed legislation. The [pilot port areas](#) were Bristol, London, and West Scotland. In September 2008 the European Commission announced that it would refer the UK and Estonia to the European Court of Justice for their failure to implement the Directive by the July 2007 deadline.<sup>19</sup>

The government introduced the final regulations in July 2009, and they came into force in the UK on 1 September 2009. The *Port Security Regulations 2009* ([SI 2009/2048](#)) provide for the requirements under the Directive to establish port security authorities, designate a port security officer, carry out a port security assessment and implement a port security plan. The

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<sup>18</sup> DfT, [Public Consultation on the Port Security Regulations 2008](#), 18 April 2008

<sup>19</sup> EC press notice, "[EC: Port security: Estonia, UK late with transposing Community rules](#)", 18 September 2008

2009-10 Transec annual report, published in September 2010, outlines achievements to date towards fulfilling these objectives:

TRANSEC has undertaken extensive work with the ports of Bristol and London, which have acted as test ports for the implementation of the new regulations. The port of Bristol became the first port in the UK to have completed a designation order under the regulations, which require a formal definition of the boundary of the port.

The Port of Bristol Security Authority is now designated as the port security authority (PSA) for Avonmouth and Royal Portbury Docks. The Order was laid before Parliament on 17 February 2010 and came into force on 19 March 2010. The first meeting of the Port of Bristol PSA was held on 10 March (exceptionally *before* the Order came into force) at which a port security officer (PSO) and a chair were appointed.

We now have a list of 16 port areas where we will be concentrating initial efforts to implement the Directive, and preliminary discussions have already taken place with the ports involved. We anticipate that each of these port areas will have established a PSA and appointed a port security officer by 31 December 2012.<sup>20</sup>

## 5 Changes to US law: scanning at international ports

On 3 August 2007 President Bush signed the *9/11 Commission Bill* into law. Under Title V of the Bill ships sailing to the United States from foreign ports must be scanned in their port of origin from 2010 for larger ports and 2012 for smaller ports. This follows one of the recommendations in the 9/11 Commission Report that “opportunities to do harm are as great, or greater, in maritime or surface transportation. Initiatives to secure shipping containers have just begun”. Consequently, Title V provides for the following:

Requires all containers leaving the largest ports overseas to be inspected using the best-available technology, including scanning for radiation and density, before they are loaded onto a ship destined for the United States. Also requires DHS to implement requirements (final rule) within a year after issuing its foreign pilot program report (section 231 of the SAFE Port Act). The deadline for smaller ports will be 5 years from enactment, and 3 years for large ports. Title includes provisions for tamper-proof security warnings and standards for security seals.

The issue was one of the most contentious in the Bill, with the House of Representatives, the Senate and the President disagreeing on its merits. It was reported that the White House had taken the view that the measure was “technically and economically unfeasible”.<sup>21</sup>

The European Union expressed concerns about the plans. The EU Taxation and Customs Commissioner, László Kovács, released the following press notice:

László Kovács, European Commissioner responsible for Taxation and Customs Union, expresses strongest concerns on the adoption by the US Congress of a piece of legislation introducing a unilateral requirement for all containers destined for the US to be scanned prior to loading on a vessel in a foreign port. This legislation would create a disproportionate burden on EU traders without proven benefits for security.

"I am extremely concerned by the possible introduction of the US HR1 legislation which would introduce 100% scanning of US bound cargo containers. Experts on both sides of the Atlantic have already considered this measure to be of no real benefit when it

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<sup>20</sup> op cit., *TRANSEC Annual Report April 2009–March 2010*, paras 3.4-3.6

<sup>21</sup> “Congress sets goal to scan all cargo ships”, *The Seattle Post*, 20 July 2007

comes to improving security while it would disrupt trade and cost legitimate EU and US businesses a lot of time and money. I also regret that the USA did not await the results of the pilot actions that the EU and US Customs are about to launch before pressing ahead with this piece of legislation", said Mr Kovács.

He added: "Instead of a 100% scanning, I advocate applying risk analysis for the selection of cargo containers to be checked prior to leaving the EU for the US. This would find a balance between legitimate trade facilitation and customs security, an approach that the European Union has always supported."

By introducing the US HR1 legislation, the USA transfer unilaterally and without coordination with its trading partners the resource burden for protecting the United States onto them. For the EU and other major partners, the legislation would require major re-structuring of EU ports and place a very heavy financial burden on EU business and ultimately its taxpayers. This measure has the potential to damage the possibility for EU trade to compete fairly with their US competitors. According to the US plans, this measure has to be implemented within a 5 year deadline. Currently, US and EU customs are preparing pilot actions.<sup>22</sup>

In June 2008 the World Customs Organization published a report by the University of Le Havre on the anticipated impacts of the proposed 100 per cent scanning law. The report found that global trade, shipping, port and customs administrations would have to undergo "pivotal and costly changes" to accommodate the law. Port authorities and customs services voiced two main concerns: the technical and organisational difficulties of bringing 100 per cent scanning of US-bound exports into operation by 2012; and the issue of reciprocity of this procedure for containerised traffic leaving the US for main ports in other countries.<sup>23</sup>

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<sup>22</sup> EC press notice, "[László Kovács expresses serious concerns on US requirement for all containers destined for the US to be scanned prior to loading on a vessel in a foreign port](#)", 2 August 2007

<sup>23</sup> WCO press notice, "[WCO releases University of Le Havre study on the global impact of the US 100% maritime container scanning legislation](#)", 10 June 2008; report available on the WCO website