

Ocean Carrier Service Contracts: Now Negotiable

Miller, Canfield, Paddock and Stone, P.L.C., headquartered in Detroit and with offices in Canada and Europe, has been active in international business and trade law for many years. The International Business and Trade Law Group was formed to provide legal services to U.S. and foreign multinational companies, banks, and other firm clients whose business affairs are tied to the increasingly interdependent world economy.

For more information contact:
Richard A. Walawender
Director, International Law Group
(313) 496-7628
walawender@millercanfield.com

When the Ocean Shipping Reform Act was passed in 1999, shippers were granted the long-sought right to negotiate better terms and rates—below those set by Rate Conferences. Savvy companies have been drafting their own ocean carrier service contracts to control the cost of freight rates and hold carriers to a higher level of customer service. As companies negotiate rates and terms with carriers, shippers should present their own service contract with terms and conditions that meet their business needs.

Many shippers are presented boilerplate service contracts by carriers with loop holes that allow the carrier to impose additional fees such as war risk insurance surcharges; emergency fuel charges; emergency bunker surcharges; and bunker and currency adjustment charges. While it's true that carriers have incurred additional costs in the past year because of fuel hikes and new security responsibilities imposed by the U.S., such as, C-TPAT and the 24-hour rule, these costs should be foreseeable at the time rates are negotiated.

Boilerplate contracts offered by carriers also limit the carrier's liabilities and responsibilities and often refer to the terms and conditions of other shipping documentation like the ocean bill of lading. The shipper's service contract can



reject any attempts to include terms which limit liability. Instead it can establish the right to indemnification from the carrier's tortious or willful misconduct.

The shipper may also demand other services from the carrier that provide operational advantages such as:

1. Payment in U.S. or local currency
2. Week's supply of empty containers
3. Guaranteed forecast quantity requirements at agreed rates

The shipper that creates its own service contract will benefit by taking the time to define its business needs in legal terms that can be negotiated with the carrier rather than attempting to match its needs to the boilerplate language in the carrier's contract.

For assistance in creating and negotiating a service contract, please contact the author.

Andrew P. Doornaert
doornaert@millercanfield.com
(313) 496-8431

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What your company should know about C-TPAT

Security has become an integral component of normal business operations since the implementation of C-TPAT (Customs-Trade Partnership Against Terrorism). C-TPAT is a joint government-business initiative aimed at building cooperative relationships that strengthen overall supply chain and border security. Although the government describes the program as voluntary, it has become mandatory from a business perspective for two reasons: (1) to reduce border delays and (2) to meet customer requests that suppliers participate in C-TPAT.

Benefits of C-TPAT

C-TPAT participation lowers the likelihood that an importer's cargo will be stopped for security reasons by U.S. Customs. Customs looks favorably upon participation in the program in its targeting process for identifying high-risk cargo for searches.

C-TPAT participation is required before a shipper will be allowed to use dedicated truck lanes on the Canadian border through FAST, a Canadian-U.S. joint program to expedite clearance of transborder shipments.

C-TPAT participation is also required before a company can participate in the Importer Self-Assessment program. This self-audit program can remove an importer from the audit pool of companies that would be potentially subject to a comprehensive audit by U.S. Customs.

C-TPAT participants must manage the security of their supply chain

U.S. Customs requires participants of C-TPAT to adopt methods to manage the security of their supply chain. Applicants must submit signed agreements to Customs, representing their commitment to the C-TPAT security guidelines. Applicants must also submit a supply chain security profile questionnaire when they submit their signed agreements or within a specified time thereafter.

In order to meet the guidelines of C-TPAT, importers should develop a sound, properly documented plan to enhance security procedures. Where an importer does not control a facility, conveyance or process in the supply chain, the importer needs to agree to make every reasonable effort to secure compliance by the responsible party. The company should implement a written security procedure plan that addresses the following general guidelines:

Physical Security All buildings should be constructed of materials which resist unlawful entry and protect against outside intrusion. Physical security should include:

- Adequate locking devices for external and internal doors, windows, gates, and fences.
- Segregation and marking of international, domestic, high-value, and dangerous cargo goods within the warehouse by a safe, caged, or otherwise fenced-in area.
- Adequate lighting provided inside and outside the facility to include parking areas.
- Separate parking area for private vehicles separate from the shipping, loading dock, and cargo areas.
- Internal/external communications systems to contact internal security personnel or local law enforcement police.

Access Controls Prohibiting unauthorized access to shipping, loading dock, and cargo areas. Controls should include:

- The positive identification of all employees, visitors and vendors.
- Procedures for challenging unauthorized/unidentified persons.

Procedural Security Measures for the handling of incoming and outgoing goods should include protection against the introduction, exchange, or loss of any legal or illegal material. Security controls should include:

- Having a designated security officer to supervise the introduction/removal of cargo.
- Properly marked, weighed, counted, and documented products.
- Procedures for verifying seals on containers, trailers, and railcars.
- Procedures for detecting and reporting shortages and overages.
- Procedures for tracking the timely movement of incoming and outgoing goods.
- Proper storage of empty and full containers to prevent unauthorized access.
- Procedures to notify Customs and other law enforcement agencies in cases where anomalies or illegal activities are detected or suspected by the company.

Personnel Security Conducting employment screening and interviewing prospective employees should include periodic background checks and application verifications.

Education and Training Awareness Providing a security awareness program for employees, including recognizing internal conspiracies, maintaining product integrity, and determining and addressing unauthorized access. These programs should encourage active employee participation in security controls.

C-TPAT validation

C-TPAT participants are subject to a validation process involving a Customs Service meeting with company representatives and potential visits to selected domestic and foreign states to verify that the supply chain security measures contained in the C-TPAT participants' security profile are accurately being followed.

If your company does not currently participate in C-TPAT, it may need to do so as a business imperative in the near future. If your company needs further information or would like assistance in determining whether participation in C-TPAT makes sense, please contact us.

Andrew P. Doornaert
doornaert@millercanfield.com
(313) 496-8431

Manufacturing Companies Leaving Germany for Eastern Europe Deutsche Bank May Leave Next

Spot News

Opportunities for Exporting to Iraq

May 7, 2003, President Bush suspended most of the provisions of the Iraq Sanctions Act of 1990.

FDA Proposes New Recordkeeping Requirements for Food Industry

Regulations implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

International Trade and Customs

Successful international trade and customs planning enables a company to become more competitive, create new growth opportunities and reduce the risk of civil and criminal liability related to importing and exporting. Miller Canfield offers comprehensive international trade and customs services to assist companies to reach their business objectives. The fundamental goal underlying our approach is to reduce cost and minimize the risk associated with international trade and customs duties and liability.

Miller Canfield can assist your company in obtaining cost saving opportunities such as setting up a Foreign Trade Zone. We can also advise your company on how to reduce risks and costs and develop a compliance improvement plan.

Chancellor Gerhard Schröder's decision to pass a 26 billion Euro corporate tax increase has convinced a number of companies to leave Germany for Poland, Slovakia, the Czech Republic and Hungary. Given what corporate executives claim are stringent and arcane labor laws and an anti-business climate, companies are beginning to move production facilities to the soon-to-be EU member countries of Eastern Europe.

Factories making everything from light bulbs to high-end automobiles are beginning to migrate eastward. Several months back, German auto-parts maker Bosch said it would eliminate 830 jobs at its factory in Hildesheim, Germany, and move production to a new plant in Hungary. Other German companies like Volkswagen and the luxury leather-goods company Goldpfeil have also moved production facilities to Eastern Europe. Transferring facilities to Poland and other neighboring countries now on the verge of EU membership has become easier in the last couple of years. Technical standards are high and costs, in comparison with Germany, are low.

In addition to German tax hikes, a planned increase in employer pension and health insurance contributions, due to take effect this year, have spurred yet more businesses to consider relocation. A late November poll by an association of entrepreneurs found that 7.4% of the 300 companies surveyed had already decided

to set up their production facilities abroad, while another 32% are "investigating" a transfer of their factories. Even Deutsche Bank, a pillar of the German business community for well over a century, announced in February that it is considering relocating its headquarters outside of Germany.

Non-German companies are also establishing new Eastern European operations to serve as low cost production launching pads for their EU sales. Seaports, proximity to Germany and low labor costs convinced Autoliv, the world's leading automotive safety manufacturer, to establish new production facilities in Poland. U.S.-based manufacturer Whirlpool, the world's leading manufacturer of major home appliances, also recently expanded its East European operations. The company's washing machine production facilities in Slovakia are being expanded this year as a result of the country's low costs and centralized location, along with the company's satisfaction with its existing Slovak production.

Call our office if you would like assistance with transferring and establishing operations in Eastern Europe.

Paul A. Saydak
saydak@millercanfield.com
(313) 496-7619

Corporate Flight Becoming Essential Business Tool

Business aircraft have become essential tools for companies seeking a competitive edge in the global economy. The corporate jet is no longer merely a perk for the company's top executives. Rather, these business tools now move product, technology, and equipment to crucial points of production, as well as the company's key personnel.

Miller Canfield's Aviation and Transportation Group counsels foreign and domestic flight departments and air carriers. We help clients navigate the myriad of regulations and tax issues that regulate the business aviation community. Whether your company is a

domestic operator unfamiliar with the complexities of importing aircraft into the European Union or a foreign civil operator that conducts flight operations under FAR Part 375, Miller Canfield can ensure that the utility of this asset is maximized by reducing regulatory risk and tax exposure as well as minimizing officer and director liability.

For more information about the Aviation and Transportation Group please contact:

Donald L. Katz
(313) 496-8476
katz@millercanfield.com

150 West Jefferson Avenue
Suite 2500
Detroit, Michigan 48226-4415

www.millercanfield.com

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RETURN SERVICE REQUESTED

President of Slovakia Visits Miller Canfield



Pictured left to right: Stephen Palms, principal, Miller Canfield; Ronald Weiser, U.S. Ambassador to Slovakia; Rudolf Schuster, President of Slovakia; Thomas Linn, CEO, Miller Canfield; and Richard Walawender, principal, Miller Canfield.

The President of Slovakia, Rudolf Schuster, accompanied by U.S. Ambassador to Slovakia, Ronald Weiser, and other trade delegates visited the law firm of Miller, Canfield, Paddock and Stone, P.L.C. on April 11. The dignitaries met with CEOs from many of Michigan's largest corporations at a special

luncheon hosted by Miller Canfield at the Detroit Athletic Club to discuss the benefits of investing in Slovakia, which include its coming membership in the European Union, low labor costs, and centralized location in Europe.

"The exclusive event allowed Miller Canfield to provide introductions and resources to business decision makers looking to expand their presence in the Slovak Republic" said Thomas W. Linn, CEO of Miller Canfield. "Also, the meeting was a great opportunity to strengthen the firm's position as Michigan's legal leader in international business."

U.S. investment into Slovakia has been steadily increasing over the last several years. The automotive industry in particular has found an industrial area spanning Northwestern Slovakia, Northeastern Czech Republic and all of Southern Poland an attractive location to set up operations. In Slovakia last year, auto exports accounted for almost 21% of total Slovak exports, making it the strongest export industry. Announcements of large foreign investments continue to appear frequently in the region, most notably with the recent decision by Toyota to locate three new factories near the Slovak border in Poland and the Czech Republic.

Miller Canfield has been representing companies investing in Slovakia, Poland, the Czech Republic and all of Central and Eastern Europe for well over a decade. Miller Canfield has three offices in Poland with local attorneys who handle all aspects of foreign investment, including real estate, employment law, mergers, acquisitions, and project finance. For more information on Miller Canfield's International Business practice, please contact Richard A. Walawender at (313) 496-7628.