



**6 Facts the Canadian Maritime Community  
Must Know About the Fast Track Implementation  
and Enforcement of the U.S. Maritime  
Transportation Security Act Of 2002**

A report prepared by COPE Solutions Inc.

## Introduction

The Canadian maritime community, like the international one, has been very focused on maritime security since 9/11 and particularly so since the acceptance of the amendments to the SOLAS convention improving measures for maritime security in December 2002. There is widespread realization of the implications of this amendment and of the July 2004 deadline for implementation of the new International Code for the Security of Ships and Port Facilities (ISPS). **However, there is another piece of legislation that potentially has a far greater impact on the Canadian shipping industry.**

**The United States Maritime Transportation Security Act (MTSA) of 2002 applies to vessels operating in U.S. waters (regardless of flag) and, in addition to U.S. domestic ports, foreign ports that receive vessels intending to travel to U.S. port facilities. This includes the vast majority of Canadian ports and vessels.** Although there has been some confusion in its interpretation, it is clear that both Congress and the United States Coast Guard (USCG) consider this to be a matter of national security. Consequently the US government will continue to fast track implementation and strictly enforce its provisions.

### 1. Vessel Vulnerability Assessments and Security Plans

Like the ISPS code, the MTSA requires vessel security assessments of all “vessels that pose a high risk of being involved in a transportation security incident”. The MTSA defines a security incident as an incident resulting in significant loss of life, environmental damage, transportation system disruption, or economic disruption in particular, and is not only for SOLAS registered ships. The USCG has interpreted this to include all SOLAS registered ships, cargo vessels, offshore supply vessels, passenger vessels and certain small passenger vessels, barges carrying dangerous cargos, tankers, mobile offshore drilling units and towing vessels greater than 6 meters. **This interpretation will include the majority of Canadian shipping traffic operating to U.S. ports, regardless of SOLAS registration.**

Assessments must also be completed for each individual vessel (i.e. it is not acceptable to use one plan for a class of vessel) and from these assessments, security plans must be written that relate back to the vessel assessment in such a way that demonstrates any vulnerabilities identified for that specific vessel have been mitigated. The plans must at a minimum, include provisions for establishing and maintaining physical security, personnel security, and procedural security policies. The USCG has been directed to publish standards required for assessments and plans and intends to do so by July 2003. They have already stated that any standards will be based on the ISPS code (part A and B).



## 2. Foreign Port Assessments

USCG personnel have already deployed to some Canadian ports to conduct quick look security assessments, however the MTSA formalizes this requirement for all non U.S. ports that either originate maritime traffic to U.S. waters, or are visited in transit by vessels traveling to U.S. waters. The USCG is required to assess the effectiveness of anti-terrorism measures, including screening and security measures in place, compliance with appropriate security standards (to be determined by USCG but probably in accordance with the ISPS) and the security management program of the port. Based on these assessments, the act requires the Secretary of Homeland Defense to recommend improvements if required. **If recommendations are not acted upon, the U.S. has the option of denying entry into U.S. waters for any vessel arriving from an insecure port.**

## 3. Transportation Security Cards

**The MTSA also introduces the requirement for a USCG issued Transportation Security Card for anyone having to enter a secure area of a vessel (i.e. bridge, steering position, engine room etc) while in U.S. waters.** This includes members of the crew and is regardless of flag of ship or nationality of the crew. The act describes the specific requirements as:

- An individual allowed unescorted access to a secure area designated in a vessel or facility security plan
- An individual issued a license, certificate of registry, or merchant mariners document by the U.S. Coast Guard
- A vessel pilot
- An individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel
- An individual with security sensitive information and other individuals engaged in port security duties

The act does specify that Transportation Security Cards will not be refused unless there is a history of felony conviction and/or incarceration, however, there is also a stipulation that the card could be refused if it is felt the individual may pose a terrorist threat to the United States. **Most, if not all, crew members on Canadian flagged shipping will require this documentation.**



#### 4. ISPS versus MTSA

While there are many similarities between the ISPS and MTSA, there are some significant differences that must be understood:

- The ISPS is based on International Maritime Organization (IMO) guidelines and individual security assessments and plans, prepared to comply with ISPS, will be authorized/approved by the flag state. The MTSA assessments and plans will be based largely on the direction contained within ISPS, however authorization approval will remain with the USCG; this will not be delegated to flag states or other organizations. The USCG will require assessments and plans for every applicable port and vessel and will conduct its own review. The review and approval process will not be delegated to any flag state or organization.
- The SOLAS amendments make Part A of ISPS mandatory but not Part B, which is offered as a guide. The USCG has declared (USCG Security Notice dated 30 December 2002) that in order to be in compliance with the MTSA, Part B of the ISPS is also mandatory. This means Canadian vessels operating in U.S. waters must conform to the entire ISPS.
- The MTSA also requires the security plans to include identification by name of the specific individual(s) having full authority to implement security actions
- The MTSA requires a description of the specific training drills and security actions to be carried out under the authority of the security plan.

#### 5. MARSEC Levels

The Maritime security levels, 1, 2 and 3, are directly related to the US Homeland Security Alert levels. This means that when the homeland security level changes, say from yellow to orange, the MARSEC level would automatically change from 1 to 2. Every vessel in or entering U.S. waters will be required to adopt a security posture appropriate to the level in force (these will be defined in the security plan). This may also have application to Canadian ports. Although there is no legislation that requires Canadian ports to automatically follow U.S. MARSEC levels, the USCG is empowered by the MTSA to monitor security postures. If a Canadian port is found to be non-compliant with U.S. standards, its certification under the MTSA could be removed. **If any ship or port facility were found to be non compliant, they would run the risk of loosing their USCG certification and hence be denied access to US ports or vessels.**



## 6. Timelines

The provisions of the ISPS (port and SOLAS registered vessel security assessments and plans) are scheduled to come into force 1 July 2004. The IMO has been adamant that there will be no time extensions. This in of itself represents a significant challenge to Canadian shipping because most of this activity has not yet started. But the MTSA timelines are more urgent. The act directs the USCG to promulgate interim regulations that will provide direction to applicable ports and vessels in proceeding with required assessments and security plans. These must be in place when the act comes into force 6 months later. The USCG will publish these interim regulations **July 2003 and the MTSA will come into effect 01 January 2004. All ports and vessels subject to the MTSA must have security assessments and plans completed by this date.** This will include virtually all Canadian shipping and port facilities. It must also be realized, that this act is being fast-tracked by the U.S. administration. The Secretary for Homeland Defense is not required to comply with the U.S. Administrative Procedures Act, which would normally require advance notice to, and comment from, the industry being regulated. Although there have been some USCG sponsored consultations, time is not being allowed for the normal full process. This act is going into law January 2004. There are differences between the USCG and Congress in terms of interpretation of implementation of this legislation, but both clearly see this as an issue of national security and will not back down from the acts provisions.

## Conclusions

The MTSA will have a dramatic impact on the Canadian maritime sector. If ships and port facilities do not provide security plans to the USCG, they may be barred from US ports or be placed off limits to any vessel traveling to the US. **The following critical points must be noted:**

- Security plans must be vessel/facility specific and be based on a unique security assessment.
- Both parts A and B of the ISPS are mandatory to be compliant with the MTSA.
- Canadian ports and vessels must comply by January 2004 in order to enjoy continued access to U.S. ports.

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