

Global Compliance Readiness – Law Firms

The C-TPAT And CSI Supply-Chain Security Initiatives Today

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The Customs-Trade Partnership Against Terrorism (“C-TPAT”) and Container Security Initiative (“CSI”) are recognized as U.S. Customs and Border Protection’s (“CBP’s”) primary supply-chain cargo security initiatives. CBP uses these programs in conjunction with pre-shipment trade data filing programs and automated targeting and detection systems to help prevent illegal flows of cargo of all types into the United States. As C-TPAT and CSI enter their seventh year of operation, CBP continues to expand and refine them.

Each program has recently been evaluated for effectiveness in achieving the goal of border security, and the reports show mixed results. CBP itself commissioned the University of Virginia Center for Survey Research to conduct a “C-TPAT Cost-Benefit Survey.” This report, published in August and available on the CBP website, is a summary of the results of an email survey of 29% (1,756 respondents) of the 6,000 C-TPAT “members” who received a survey request.

In September 2007, the Government Accounting Office (“GAO”) released its 320-page “Progress Report on the Implementation of Mission and Management Functions of the Department of Homeland Security,” which includes comment on C-TPAT and CSI. The GAO expects to issue a more detailed report on C-TPAT and CSI later this fall upon the first anniversary of enactment of the Security and Accountability for Every (“SAFE”) Ports Act of 2006, which codified C-TPAT and CSI.

1. C-TPAT

C-TPAT is a voluntary program open to participants in the cross-border supply-chain. Membership is open to Canadian and Mexican manufacturers (and selected foreign manufacturers in other countries) and U.S. importers and service providers. The recently published survey found that approximately 62% of participants are headquartered in the United States, 25% in Canada, and 3% in Mexico. As of August 2007, CBP estimates that member importers account for 46% of U.S. merchandise imports. 53% of members are U.S. importers, 23% common carriers, 18% port authority/terminal operators, air freight consolidators and NVOCC’s, and 5% U.S. Customs brokers and foreign manufacturers.

Membership for U.S. firms operating in the supply chain is becoming the norm rather than the exception, especially among service providers who have found it to be a relatively low cost and effective marketing tool. The annual revenue of

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most service provider members, including carriers, is less than \$10 million, whereas importer members tend to be larger companies, including those with revenues of \$100 million or more.

C-TPAT membership has certain benefits. CBP reports that shipments transported and imported by C-TPAT members are several times less likely to be targeted for physical inspections, resulting in considerable savings in time and money as CBP increases the number of exams overall. Priority for cargo inspection may be given to C-TPAT members, especially those that CBP has verified (“validated”) at the “Tier Three” level reserved for members who exceed the agency’s published minimum security standards. Of those surveyed, 64% of importers reported that they have received C-TPAT on-site validation by CBP personnel and approximately 22% were awarded Tier Three status. At some U.S. ports, CBP has recently begun to allow C-TPAT members to reduce their handling costs by removing to their own location all containers not selected for inspection before CBP has completed its inspection of the entire shipment. Cargo of C-TPAT members arriving from Canada or Mexico by truck are eligible for quicker transit through Free and Secure Trade (“FAST”) lanes set up at border check points.

In order to join C-TPAT, an eligible participant must describe and assess its security elements and meet minimum standards published by CBP. Most recently, CBP published standards for Mexican long-haul highway carriers, who will soon be eligible for C-TPAT membership. Minimum security standards generally cover procedures and practices relating to cargo handling and storage and conveyance tracking and monitoring procedures, personnel management and hiring, electronic data and recordkeeping, physical security of office and building, and selection of business partners (including service providers) in the supply chain. A Status Verification Interface (“SVI”) now makes it possible for members to confirm electronically the C-TPAT status of their business partners and potential business partners.

“Validation” is the CBP process review and verification of C-TPAT members’ security profile, not an audit. The purpose is to determine whether the member meets or exceeds the minimum security standards. CBP recently announced its intention to validate every C-TPAT member within one year of certification and re-validate all members at least once every 3 years, but as of March 2007 CBP had “validated” only 4,000 members. During validation, at least one CBP supply chain specialist meets with the member to review that company’s implementation of the applicable security criteria. Often, the focus is selective in terms of one or more aspects of the overall security program. At the end of the process, which may take several hours to several days, the member receives a written report from the agency. Under the threat of loss of membership and potential benefits, the member must address and correct any reported deficiencies.

Pursuant to the “Security and Accountability for Every Port Act of 2006

(“SAFE Port Act”; Pub. L. 109-347), CBP has launched a one-year voluntary pilot program to assess the feasibility of using third-party validators for work abroad. CBP posted to its website (www.cbp.gov) in August the names of 11 private companies it has authorized to conduct on-site validation reviews on CBP’s behalf in the People’s Republic of China. CBP will identify for review the China facilities of companies that handle the merchandise and containers destined for shipment to the United States, and the results of these visits will be considered in the context of the validations of C-TPAT members (U.S. importer). The approximately 300 importers that buy over 75% of their imports from China are eligible for the pilot program and can select a third-party validator from the approved list.

The recent survey revealed that nearly half of C-TPAT members did not have a formal supply chain security system in place prior to joining the program. Although only one-third of the members indicate that the cost of participation outweighs the benefits, those who have been members longer have a more favorable view of the program. The primary benefits reported by importer and carrier participants were increased workforce security, fewer cargo inspections and lower inspection release times, and predictability in cargo clearances. Nearly all respondents indicated that they planned to retain their membership in C-TPAT.

The GAO in its preliminary report concluded that CBP has achieved its goal of developing a supply chain security strategy but not yet achieved the expected level of performance. For example, GAO questions how intrusive and effective C-TPAT validations can be, given the voluntary nature of the program. A persistent GAO criticism is that C-TPAT has been understaffed and underfunded, given its objectives. Congress has addressed this issue by increasing funds for staffing, and CBP now claims that 156 Supply Chain Security Specialist positions have been filled. CBP has authority to add 50 additional Security Specialists a year in FY ’08 and ’09. The CBP budget has grown approximately 35% since 2004 from \$5.9 to \$9.3 billion.

2. CSI And Advance Trade Data Filing Requirements

The Container Security Initiative (“CSI”) is intended to thwart delivery of weapons from abroad in sea containers.

Through CSI, CBP now claims that approximately 90% of all transatlantic and transpacific cargo coming into the United States is subject to pre-export screening. Approximately 82% of maritime containers moved through CSI ports in FY 2006, up from 45% in 2004. CBP has stationed its inspectors at over 50 ports around the world, with plans to increase the number to 58 by the end of this year.

Through CSI, CBP officials solicit partnership with the customs authorities of foreign governments in a joint effort to target and, on a selective basis, inspect what are perceived to be high-risk sea containers. Foreign participation requires the host nation to implement port security procedures and an automated risk management system and to share data with CBP personnel.

Targeting for container inspections depends in part on review of information from CBP’s Automated Targeting System (“ATS”) and from other sources used to determine the risk characteristics of a container. Earlier this year, CBP proposed adding 10 additional data elements to the list that importers, and 2 which ocean carriers, must report at least 24 hours prior to foreign lading of sea containers. After completion of internal review, perhaps this fall, CBP expects to publish a Federal Register notice adding the “10+2” to the “24 hour rule” advance trade data requirements that already exist. Eventually, advance trade data filing may lead to a general practice of filing the complete customs entry prior to arrival of the merchandise at the U.S. port.

CBP officials routinely refer containers perceived to be high-risk to the customs authorities of the host country for inspection. The inspections are conducted by customs authorities of the host nation, with a CBP official acting as observer. Since there are no internationally recognized minimum standards for detection equipment, GAO has questioned the efficacy of such inspections in some foreign ports. Inspection techniques include physical inspection and non-intrusive inspection (“NII”) screening devices using X-rays and gamma rays, as well as radiation detectors.

Legislation enacted in August 2007 requires all U.S.-inbound containers to be scanned by NII equipment within five years, a very tall order to fill in a relatively short time. When not inspected overseas, sea containers are to be inspected upon arrival at the U.S. port.

U.S. Customs & Trade Laws Present A Number Of Duty
Savings Opportunities For Companies
That Make The Investment To Explore Them.

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