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PIP Consultations

The following article was written by Carol Osmond, senior policy advisor, I.E.Canada.

I.E.Canada has been actively engaged in recent weeks in consultations with respect to proposed changes to the Partners in Protection (PIP) program, scheduled to take effect in June 2008.

On November 15, 2007, representatives of I.E.Canada participated in the first meeting on the proposed changes between officials of the Canada Border Services Agency and representatives of associations from the trade community. Following this meeting, the association organized a conference call in order for members to hear directly from Canada Border Services Agency (CBSA) officials about what the agency's plans are for the program. Over 50 members of the Security and Customs and Legislation Committees participated in the call, which was held on November 26, 2007.

CBSA is strengthening the PIP program to make it compatible with the Customs-Trade Partnership

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Food Safety is a Global Concern

Globalization has highlighted the disparity in safety policies and practices among the many nations involved in international trade and groups at home and abroad are taking steps to ensure consumer



Carol Osmond, I.E.Canada's senior policy advisor.

Against Terrorism (C-TPAT) program in the United States pursuant to a commitment made by Canada under the Security and Prosperity Partnership. Many of the security measures that are recommended under the current PIP program will become mandatory under the new one.

Currently there are approximately 2,200 members of PIP, 28 percent of which are importers or manufacturers. Existing PIP members will not be grandfathered into the new program. They will be expected to reap-

safety.

I.E.Canada's Keith Mussar is at the forefront of the safety charge, raising awareness and encouraging

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Investing in Supply Chain Optimization

The following article was written by Eric Couture, president, International Trade & Logistics (ITL) Canada.

At I.E.Canada's Fall Conference speaker after speaker discussed safety and security. In the U.S., the President chartered a working group to review and report on import safety and security. The results and an implementation plan proposal were recently completed, and although not yet made public, it wouldn't be presumptuous to surmise that the report will ask for increased security and a total revamp of U.S. safety legislation.

Hallock Northcott, President of the American Association of Exporters and Importers, brought the issue straight into the open. The problem is that the safety issues everyone talks about are "voluntary" standards, not regulatory. Therefore, some manufacturers around the world are opting not to voluntarily comply with the standards. Profits can increase by ignoring the standards; after all, they are 'voluntary.'

This has become a central issue in international trade. If the toy and

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NAFTA Review Finds for Importer

The following article was written by Michael Kaylor, partner, Lapointe Rosenstein, L.L.P.

A recent decision of the Canadian International Trade Tribunal (the "Tribunal") in the case of M.R.P. Retail Inc. v. President of the Canada Border Services Agency, AP-2006-005 affords significant hope for importers involved in a NAFTA origin verification.

MRP imported cotton knit T-shirts and tank tops (the "goods in issue") from California Sunshine Activewear Inc. ("California Sunshine") of the United States. The goods were actually produced in Mexico by Alimex Fashion S.A. de C.V. ("Alimex") for the account of California Sunshine. Alimex sewed and finished blanks for T-shirts and tank tops from pre-cut cotton knit fabric provided by California Sunshine, returned them for screen printing and embroidering. In other cases, California Sunshine contracted with Alimex for a package deal in which the latter bought the fabric and produced the T-shirts and tank tops itself. California Sunshine then sold the finished T-shirts and tank tops to MRP.

California Sunshine provided a Certificate of Origin. California Sunshine did not reply to a request initiated by the CBSA for the completion of a verification of origin questionnaire. When the CBSA advised MRP that it intended to deny the preferential tariff treatment as a result of insufficient proof of origin, MRP filed a request under section 60 of the Customs Act for a re-determination of the decision and persuaded California Sunshine to provide the written confirmation of the production process in the form of certificates or affidavits of origin from Alimex and the fabric suppliers. By the time the matter got to the Tribunal, California Sunshine had been dissolved and MRP was forced to offer its own testimony



Michael Kaylor, partner, Lapointe Rosenstein, L.L.P.

coupled with limited documentary evidence.

In its decision, the Tribunal dealt with several points:

CERTIFICATE OF ORIGIN

The first involved the requirement that the importer produce proof of origin of the goods. The Tribunal noted that paragraph 24(1)(a) of the Customs Tariff does not prescribe a form for a Certificate of Origin. The CBSA argued that California Sunshine was not the "producer" of the goods because it had sub-contracted the production of same to others. The Tribunal found that the Proof of Origin of Imported Goods Regulations do not prescribe the form of the Certificate of Origin itself nor did it indicate that the Certificate of Origin had to be provided by a "producer". Although California Sunshine did not, itself, produce the goods, the Tribunal found that since California Sunshine had commissioned and directed the manufacturing or processing and assembly of the goods through its contractors, it could be considered that California Sunshine was the producer of the goods.

Given the absence of any requirement as to the form of a Certificate

of Origin imposed by section 24 of the Customs Tariff, the Certificate as signed by California Sunshine was accepted by the Tribunal.

RULES OF ORIGIN

After a lengthy discussion as to the specific requirement of the rules of origin as set forth in subsection 4(1) of the NAFTA Rules of Origin Regulations, the essence of the case rested on consideration of whether the burden of proof which rested with MRP had been discharged. The Tribunal had the testimony of several representatives of the CBSA. The President of MRP testified at the Tribunal and introduced a letter from the National Sales Manager for California Sunshine into evidence.

The Tribunal, relying on the relaxed rules of evidence to which all administrative tribunals are bound, reached what can be described essentially as an equitable decision. Relying on a decision of the Supreme Court of Canada, the Tribunal reiterated the well-settled principle of common law that tribunals are masters of their own procedure and are not bound by the rules of evidence, provided they follow the rules of natural justice.

The Tribunal cited section 35 of the Canadian International Trade Tribunal Act which provides that hearings are to be conducted as informally and expeditiously as the circumstances of fairness permit. Rule 34 of the Canadian International Trade Tribunal Rules allows an appellant to rely on documentary evidence at a hearing. Rule 6 of the same rules states that the Tribunal may dispense with, vary or supplement any of the rules if it is fair and equitable to do so. Noting that its normal practice is to admit evidence liberally with a view to giving each item of evidence such weight as it deserves, the Tribunal reviewed the evidence which had been proffered on both sides of the case recogniz-

Shipping and Trade Horizons



Leo Ryan

Shipping and Trade Horizons, a Tradeweek column, is produced by Leo Ryan. The column addresses Canadian industry issues and trade developments of interest to our members.

Binational Waterway Study Explores Future

The just-released, long-awaited binational study by Transport Canada and the U.S. Army Corps of Engineers on the future outlook for the Great Lakes/St. Lawrence Seaway System operating at half-capacity contained few surprises.

It predicted "a slow but steady increase" in traditional bulk shipments in the decades ahead. Maintaining current infrastructure up to 75 years old is crucial. Through various initiatives, the waterway has the potential of relieving congestion on surface transportation networks as well as at border crossings in the region. The latter will require incentives to encourage the use of marine transport. Above all, persistent "institutional impediments that discourage the provision of shortsea shipping services (notably across the Great Lakes) need to be addressed."

What was most striking was the

study's detailing of perceived significant opportunities for the Great Lakes/St. Lawrence Seaway to achieve a revival of container services penetrating deep into North America's heartland. There has been no regular container service for several decades.

The study argues that the waterway which allows ocean vessels to penetrate the continent's industrial heartland "can be positioned to capitalise on the continuing growth in international trade. It can attract more traffic and emerge as a more effective component of the North American intermodal network, providing alternative routings to congested highways. In this way, it can finally participate in the Container Revolution."

Realising the opportunities, notes the study, would be possible by deploying small multi-purpose ships (widely used in Europe) that could easily transit the Seaway's locks.

The study estimates that present containerized volume in the region at 35 million FEUs (40-ft equivalent units) could double to 70 million FEUs by 2050. It suggests that a "marine/intermodal option could accommodate 4% of containerised traffic by 2050, if it is competitive with rail and highway." Over this period, the share of container cargo moved by truck could drop from 98% to 92% because of diversion of growth to other modes caused primarily by congestion.

The report affirms that "existing markets suggest that it would be feasible to offer a service between Hamilton and Duluth or Thunder Bay and Chicago as well as a daily service between Hamilton and Montreal, using small ro-ro vessels."

Another water route on which small vessels of up to 700-teu capacity could be deployed would link

Halifax, on the Atlantic coast, with Hamilton on Lake Ontario, the study says. However, observers note that a recent project for such a Halifax-Hamilton service has made so little progress it may be stillborn - with the business case evidently hampered by the fact that the St. Lawrence Seaway shuts down for three months every winter.

Following a survey of shipper preferences, the study claimed that "seasonality was found to be of less concern to most shippers because they draw up their transport contracts according to spot markets, monthly arrangements or on short terms, and thus for them switching to other modes is less problematic."

Nevertheless, the jury is still out. And one wonders, too, how the sudden departure of arguably the two most ardent champions will affect the concerted, shortsea campaign. Keith Robson has stepped down after five years at the helm of the Hamilton Port Authority. Well-known international trade specialist Bob Armstrong has become President of Supply Chain & Logistics Association Canada. Other equally determined leaders will have to volunteer to carry the torch.

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governments, associations and businesses worldwide to develop stringent safety standards and food product recall processes.

Recently, Mussar was in China and Hong Kong to discuss the importance of the product recall process and the need for global standards. According to Mussar, promptly executed recalls are critical to building and maintaining consumer confidence. "A food recall demonstrates that processes in the food supply

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ply but will be given a transition period - CBSA has suggested six months - to meet the new minimum security criteria.

The proposed new minimum security criteria under PIP are in many cases identical to those under C-TPAT. There are, however, some differences. For example, under the proposed PIP criteria, CBSA will be requesting a site map from the applicant. This is not a requirement under C-TPAT. In the case of seals, while they will be required, the draft PIP minimum security criteria do not specifically require high security seals that meet or exceed the current PAS ISO 17712 standards as is currently the case under C-TPAT (CBSA is looking to industry for input regarding the challenges associated with seals).

The draft PIP criteria also contain a number of recommended practices for companies, such as policies and procedures for undertaking a risk assessment of the supply chain, and periodic training of employees and testing of emergency contingency plans to ensure continuation of trade in the event of an emergency/security situation, which are not included in C-TPAT.

CBSA has been in discussions with U.S. Customs and Border Protection (CBP) regarding mutual recognition of the PIP and C-TPAT programs (to date, CBP has only formally recognized the supply chain security program of one country, New Zealand's Secure Exports Scheme).

CBSA officials have stressed that mutual recognition does not mean full harmonization of the two programs. In other words, acceptance into one program will not mean automatic acceptance into the other. In addition to differences in the minimum security criteria, some of which are noted above, CBSA officials noted that CBSA will not be conducting overseas verifications of

business partners. Other differences in the two programs include that CBSA will not approve a company for PIP until a CBSA intelligence officer has conducted an onsite verification, and CBSA will be offering security awareness seminars, which CBP does not under C-TPAT. Despite the differences in the programs, CBSA officials are confident that mutual recognition will be achieved by June 2008.

If mutual recognition does not mean automatic acceptance into the other program, then what does it mean and will there be any tangible benefits? CBSA officials indicated that one of the possible benefits of mutual recognition would be acceptance of each other's onsite verifications so that a company that is a member of both programs would not have to undergo two verifications and mutual recognition for purposes of satisfying the business partner requirements. These benefits still have to be negotiated with CBP.

Another area of concern to business is that participation in PIP have meaningful benefits; otherwise it will be difficult to convince senior management to invest in the security measures needed to qualify for the program. Some of the benefits that CBSA is contemplating include lower risk scores for participating companies, front of the line inspections and giving priority to PIP members in the event of an incident at the border. CBSA is interested in receiving suggestions from industry regarding benefits that could be provided under the PIP program.

In terms of next steps, I.E.Canada is forming a working group to prepare I.E.Canada's submission to CBSA before the December 31st deadline with respect to the proposed minimum security criteria for importers and exporters and the draft memorandum of understanding. This working group will be

meeting with CBSA officials to discuss the issues and concerns raised by members.

Members who would like copies of any of the materials from the meeting or conference call referred to above, or who have comments on the PIP proposals or would like to participate in a working group preparing I.E.Canada's submission to CBSA are asked to contact Martin Fedor at mfedor@iecanada.com.

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chain are working. A problem was identified and action taken, through the recall, to protect the food supply." Having good processes in place for both food and consumer product recalls protects the consumer.

In Canada, product recalls are voluntary, yet are effective due to the importance of consumer and investor confidence and brand equity. And for SMEs, their liability insurance is often tied to their recall process capability. This is not necessarily the case internationally, and as our food and product supply chains extend around the globe, the necessity for global standards and processes increases.

"Like in the airline and automotive industries, we need to all apply global standards," says Mussar. The world is moving in that direction, as demonstrated by the International Seminar on Food Safety and Public Policy Mussar attended in Shanghai. Global standards will evolve and will be modified as issues arise says Mussar, with the outcome being sound food safety standards supported by an effective and efficient recall process that protects the consumer and meets the needs of global businesses.

Mussar will be taking his message back to Asia in December where he

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ing that, to a significant extent, much of the evidence was hearsay and that very little of the evidence allowed for an opportunity for cross-examination. The most important aspect of the Tribunal's decision, however, arose as a result of the argument raised by the CBSA that, since MRP could not produce evidence of an unbroken chain of custody for the goods in the form of purchase orders, sales invoices or production records, the appeal should be dismissed.

In reply, the Tribunal held: *The Tribunal does not accept the CBSA's argument. In the first place, the context of this appeal is that the CBSA's audit-related attempts to secure detailed, supporting business information were untimely from the perspective of the actual record-keeping practices of the business involved (irrespective of what the ideal practices suitable for NAFTA may have been). As eluded to above, California Sunshine was dissolved in 2006.*

In the second place, to accept the argument would be tantamount to imposing the comprehensiveness and exacting certainty sought in an audit of the origin of goods as a standard of proof for an appeal under section 67 of the Act.

The Act does not indicate that this is a standard of proof that is to be applied by the Tribunal, and the Tribunal is of the view that it should be possible for an importer to adduce evidence on appeal that would satisfy the Tribunal of the origin of the goods without necessarily meeting the CBSA's auditing standards. If this were not the case, the Tribunal would serve as a "rubber stamp" for the CBSA's decisions, and there would be little point in including a right of appeal to an independent, quasi-judicial Tribunal in the legislation.

The MRP decision offers a significant

window of opportunity for beleaguered importers who are challenged in a NAFTA review to produce detailed information which either no longer exists or, through no fault of the importer, is simply unavailable because of the demise of the exporter/producer. The Tribunal's unique position as a quasi-judicial Tribunal which is the master of its own procedures enables the Tribunal to ensure, where circumstances permit, that justice can be done and that a taxpayer is either afforded a right of refund under a NAFTA refund claim or not rendered liable for a NAFTA assessment.

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food manufacturers can blatantly ignore safety standards, in what other areas are standards being ignored? Do manufacturers and producers have any assurance that their intermediate products are safe; are their supply chains secure?

What has become a reality to critical observers is that some of those involved in international trade have forsaken voluntary compliance in pursuit of increased profit. How many manufacturers actually perform quality tests for safety on their own products let alone the intermediate products used in their processes? Have industries become overly complacent with assumptions that everyone is complying with safety and security? It is obvious that, worldwide, we have.

What is the answer and what did the working group recommend to the President of the U.S.? We can assume that the recommendations will include increases in both security and safety requirements. Already, public discussions have included a move toward regulatory safety requirements as opposed to a voluntary system. In the security sphere, there are suggestions to move away from current cargo re-

lease procedures toward a supply chain security and release system.

It is obvious to international trade professionals that to compete in the global market players must optimize and visibly show their customers that they are concerned with both product safety and security. The players, producers and manufacturers need to develop internal programs aimed at quality assurance to ensure product safety and compliance, and to either participate in the C-TPAT program or develop their own program along the C-TPAT security requirement lines. It is time for Canadian businesses to become proactive in these areas rather than staying reactive.

The discussion at the I.E.Canada Fall conference clearly presented worldwide concerns. The issues are not just a U.S. - China trade issue regarding toys and food products; unsafe products are showing up all over the globe. When the U.S. reacts to safety and security threats from various regions, everyone is affected. Increased security at the border caused by food-supply contamination affects every country that ships agricultural products to the U.S. As the main shipper of food and animal products to the U.S., Canadian businesses are immediately affected. It is clear that Canadian business cannot afford to remain complacent and reactive; they must step up to the plate and be proactive. They must lead.

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will be addressing the World SME Expo on Food Safety in Hong Kong, where 30,000 companies are expected to attend. Mussar will also be involved in discussions with various departments of the Hong Kong government, the Hong Kong Food Science and Technology Association, the Hong Kong Food Council and the Canadian Chamber of Commerce in Hong Kong.

I.E.Canada in Action

In fulfilling its mandate to be the leading voice of the trade community, I.E.Canada has had an extremely active November, working on behalf of members and addressing issues of critical importance to importers and exporters.

Keith Mussar, chair, I.E.Canada's Processed Foods Committee, met recently with the Canada Food Inspection Agency (CFIA) and Health Canada. Topics addressed included:

Health Canada

Natural Health Products

Consultation on new labeling policies, including Nutritional Facts Declaration, Ingredient Listing and Warning Statements, is anticipated for 2008.

Health Claims

A consultation on modernization of Health Claims was launched (www.hc-sc.gc.ca/ahc-asc/public-consult/consultations/col/health_claims-alleg_sante/index_e.html). It will close the end of February, with regional consultations planned for early 2008.

Allergen Labeling

New regulations are expected early in 2008. CFIA has posted new allergen labeling "guidelines" in the form of a Q&A document on their website (www.inspection.gc.ca/english/fssa/labeti/allerg/allergee.shtml) in anticipation of the regulation, although it is unclear whether CFIA is currently enforcing these. Consultations are scheduled for late January 2008 to discuss new 'precautionary labeling' requirements.

Pre-market Authorization

Consultations on pre-market authorization are anticipated before year

end 2007. Food irradiation considerations, which are of particular interest to the Canadian Spice Association, will be captured under the pre-market submission consultation.

Canadian Food Inspection Agency *Imported Products*

Canada will develop a new policy on imported products which will be influenced by the U.S. position.

I.E.Canada initiatives in this area have included a meeting with Ambassador Lu Shumin, Keith Mussar's presentations in Shanghai and at the Hong Kong SME Expo, and meetings with Hong Kong government and trade associations including the Canadian Chamber of Commerce in Hong Kong. I.E.Canada's guidance document, the "Importer Food Safety Workbook", has been highlighted during these talks.

Country of Origin Labeling

CFIA is focusing on matters pertaining to "Product of Canada" labeling. Implications for I.E.Canada members include an increased focus on Processed Products Regulations as much of the "Product of Canada" labeling is detailed in that regulation. It could also impact pending organic food labeling regulations. CFIA is not currently considering changes to the Country of Origin Labeling.

Agriculture Canada

I.E.Canada was represented by Keith Mussar at the quarterly Canadian Food Safety and Quality Program Industry Advisory Committee meeting.

Canadian General Standards Board - Canadian national organic production and import standard:

I.E.Canada participated in the multi-stakeholder process to revise the standard with the main focus being

to avoid the introduction of new requirements that could limit market access for imported organic foods.

Other committee activities include: **Customs & Legislation Committee**

The Customs & Legislation Committee organized and hosted a joint meeting on ACI/eManifest for eight associations representing the importing community. More than 50 people participated in this meeting which included an overview of ACI/eManifest by Marie Fawcett, CBSA, a walkthrough of the proposed end state and review of the draft data set led by Tracey Speares, chair, C & L Committee and one of the importer representatives on the Design/End State Working Group for ACI/eManifest. A more detailed review of the meeting will be available in a future issue of Tradeweek.

International Cheese Council of Canada (ICCC)

A representative of ICCC attended a meeting at the office of the Minister of International Trade as part of ICCC's ongoing work to address the issue of cheese compositional standards.

Canadian Meat Importers and Exporters Committee (CMIEC)

A working group of the CMIEC recently held a conference call to discuss advocacy strategies for the supplemental beef quota.

Canadian Spice Association (CSA)

The CSA recently held a Board Meeting, which was open to all CSA members. Guest speaker Ryan Clarke of Advocacy Solutions addressed the group on advocacy techniques and strategies.

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