

# tradeweek

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## Emerging Issues in Customs

The United States remains Canada's closest and most important trading partner. As such, changes to U.S. customs rules and regulations are a major concern for Canadian importers and exporters. I.E.Canada's "Emerging Issues in Customs" conference, being held on April 21 - 23, 2008 at the Hilton Toronto Airport Hotel, is the place to hear the latest on customs developments in the U.S.

Hallock (Hall) Northcott, president, American Association of Exporters and Importers (AAEI) will be leading a panel discussion on "Emerging Issues in Customs Compliance: A Closer Look at the Developments in the U.S." Mr. Northcott will be joined by Norm Schenk, vice president, customs and trade, UPS, and other leading industry and government experts.

Of particular interest is the recent announcement of the "10 + 2" program (see February 15 issue of Tradeweek). On January 2, 2008, Customs and Border Protection (CBP) issued a Notice of Proposed Rulemaking requiring importers and carriers to electronically submit



Recent proposed changes by U.S. Customs and Border Protection will affect Canadian businesses.

additional information on cargo before it is brought into the U.S. by vessel. Importers will be required to provide 10 additional data elements to CBP. This new legislation will have a significant impact on imports into Canada (in bond or otherwise) through the U.S., as well as implica-

*Emerging Issues, cont'd on pg. 5*

## Canada-Mexico: Important Partners

The following article was written by Susan Baka, Bay Communications and Marketing Inc.

Mexico should be the partner of first importance to Canada,

second only to that of the U.S. but, despite a healthy \$20+ billion bilateral trade relationship, "our partnership flies under the radar in this country," said Guillermo

*Mexico, cont'd on pg. 4*

## Export Compliance: Taking a Closer Look

This article was prepared by Darrel Pearson, senior partner in the Toronto and Montreal based law firm of Gottlieb & Pearson, with the assistance of his associate, Vincent Routhier.

Canada's economy is significantly dependent on its imports and exports. This has been the case since before the advent of tariff preference regimes such as the Canada - U.S. Free Trade Agreement or earlier regimes such as a General Preferential Tariff. In recent years, Canada has experienced the proliferation of Free Trade Agreements (FTAs) now in existence: the NAFTA (1994), Israel (1997), Chile (1997) and Costa Rica (2002). Each has had a hand, more or less, in increasing Canada's dependence on and success in international trading.

The future expansion of Canada's participation in free trade is planned, pending or has reached the end of the negotiation phase and is awaiting ratification and implementation: EFTA, Andean Community Countries, Republic of Korea, FTAA, etc. These agreements will no doubt also contribute to an expansion of imports and exports if

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## Export Controls, cont'd from pg. 1

previous experiences serve as a measure.

Canada has also entered into international treaties, known as Foreign Investment Protection Agreements (FIPAs) with some 24 other countries. It has concluded negotiations with India and three other FIPAs are pending (Kuwait, Jordan and China). It is true that there is a direct relationship between investment and imports/exports, and so these FIPAs, like the FTAs, will likely also fuel an increase in imports/exports.

Canadian enterprises engaged in international trade would be well served to focus attention and resources on customs/trade compliance in these days of increasing international trade dependence. Compliance is not restricted to imports, though many traders think principally "import compliance" and not "export compliance" because imports attract duties and GST where exports do not. But exports, like imports, if non-compliant with Canada's statutes and regulations, attract administrative monetary penalties and may be seized or detained, and exporters may be subjected to civil and criminal penalties.

For example, non-compliance in terms of export regulation can, in an extreme case, lead to a prison term of up to 10 years under the Export and Import Permits Act, criminal prosecution under the Customs Act, and the seizure of the goods. More typically, however, an exporter's failure to present an export permit in a situation where one was required or otherwise fails to comply with export regulations leads to the imposition of Administrative Monetary Penalties (AMPS). There are some seventeen AMPS contraventions associated with export regulation and compliance, and average penalties start at Cdn\$1,000 per contravention.

Contraventions of the export con-



Darrel Pearson, senior partner, Gottlieb & Pearson.

trol legislation include:

- C170, the Exporter's failure to report the export of goods prior to the exportation (Cdn\$1,000 at First Level, Cdn\$3,000 at Third Level);
- C315, the Exporter's failure to provide any export permit required (Cdn\$1,000 at First Level, Cdn\$3,000 at Third Level);
- C195, the Exporter's failure to keep export records as prescribed (Cdn\$1,000 at First Level, Cdn\$25,000 at Fourth and subsequent Levels), and;
- C345 the Exporter's failure to report the goods subject to export control requirements (Cdn\$100 or 20% of value, whichever is greater, at First Level, Cdn\$300 or 60% of value, whichever is greater, at Third Level).

There are also re-export control regulations that flow from Canada's obligations to the United States that must be respected. As a general rule, all goods of United States origin are designated as export controlled under item 5400 of the Export Control List. U.S. origin goods that have been further processed or manufactured outside the United States so as to result in a substantial change in value, form or use of the goods are exempted from this export permit requirement. Canada imposes this export control on U.S.

origin goods in order to avoid impeding the flow of trade between the two countries while recognizing U.S. concerns in respect of trading with certain countries or groups. The administrative burden of this export control requirement may be reduced by the use of a General Export Permit (GEP 12), which, if applicable, allows the export of a U.S. origin good to most destinations worldwide without requiring an individual export permit. It should be noted that the exporter is required to properly note his reliance on GEP 12 in the export summary declaration.

Canadian exporters may also be surprised to learn that such items as electronic transmissions and technology transfers (however effected) are subject to export control. For example, the transmission of software protected by cryptographic algorithms as an attachment to an email or via the internet from Canada to a foreign country is an export. That software could be controlled under the Export Control List and the export of the emailed transmission, without an export permit, would constitute a violation of Canadian export control regulations.

Canadian export control law deals with dual use export items, that is goods designed for non-controlled purposes as well as potentially controlled purposes. Again, "information security" software (i.e. designed or modified to use cryptography) is an example of such a dual-use item. Items such as lasers, specialized metal alloys, advanced composite polymers, testing equipment, optical sensors and even cameras can, if designed or usable in both civilian and military or nuclear and non nuclear applications, be controlled.

Canada has also promulgated a law to counter foreign extra-territorial laws (and reach), principally of its neighbour to the south, which oth-

## 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.*

### Promoting the Pacific Gateway

With little public fanfare, Ottawa has established a special section within the Foreign Affairs and International Trade Canada (DFAIT) to aggressively promote Canada's Pacific Gateway among shippers and carriers for penetrating North American markets. The object is to emulate successful gateways elsewhere in the world like Hong Kong.

Launched in October 2006, accompanied by a total federal commitment of \$1 billion (much of which has since been spent), the Asia-Pacific Gateway and Corridor Initiative (APGCI) falls within the framework of strengthening Canada's competitive position in international commerce. The corridor covers the British Columbia Lower Mainland and Prince Rupert ports, and the road and rail connections across Western Canada as well as airports and border crossings.

The trade numbers are compelling. While trade with Canada's largest trading partner, the U.S., has shown little growth in recent years, the op-

posite is true as regards Asia, and China in particular. Similarly, U.S. trade with Asia has soared.

Over the past five years, Canadian imports from China have more than doubled, reaching \$38.3 billion in 2007. Exports to that country have nearly doubled to \$9.3 billion. China alone accounts for roughly half of total Canadian imports from Asia (excluding the Middle East) and almost 30% of total Canadian exports to the region, according to Statistics Canada.

Such numbers appear to justify extra attention from the federal authorities. This is certainly the view of DFAIT which recently began to elaborate customized business cases targeted at the 20 largest U.S. importers of containerized cargo including giant retailers Wal-Mart, Target, Kmart, and Home Depot.

On the heels of exploratory discussions, high level visits are planned this spring and summer to individual companies to encourage them to use Canada's Asia-Pacific Gateway. "Hong Kong is an excellent model as a gateway to China," says Michael Fine, Principal Advisor, Asia Pacific Gateway and Corridor Initiative (APGCI), Coordinating Group of DFAIT. "The key question is how do we take the Hong Kong success and apply it to Canada."

Addressing a recent conference in Ottawa held by the Association of Canadian Port Authorities (ACPA), Fine noted that more and more Asian companies are also seeking to establish footholds in North America. "We hope we can help them locate in Canada."

Fine spelled out four main components to DFAIT's investment strategy aimed at raising awareness of the increased supply chain efficiency available through Canada.

One is to outline a detailed inven-

tory of major infrastructure projects. The second is to engage DFAIT's investment/commercial counselors in promoting the Asia Pacific Gateway and in providing intelligence and feedback. The third is to enhance infrastructure co-operation with China through a Memorandum of Understanding. The fourth component involves strengthened partnerships with the provinces, ports, airports, railways and airlines.

At the same time, DFAIT is promoting airports in Western Canada for cargo and passenger traffic, and is working with Transport Canada to develop backhaul/export opportunities and short sea shipping. Backhaul opportunities exist in such areas as refrigerated food, forestry products and certain agricultural products.

All well and good, but there is some debate in the transportation industry over the approach of the civil service.

Responding to questions from this TradeWeek columnist, Michael Broad, President of the Shipping Federation of Canada, declared candidly: "Government can support trade routes/gateways, but it should do so equitably - promoting all trade corridors, not just one.

"I also do not think that it is the government's role to visit individual shippers or receivers; individual ports do that now and they have a better handle on the business and the current situation than someone from Industry Canada or International Trade. In fact, they may be acting contrary to the interests of shipping lines who already call both Canadian and U.S. ports."

Raymond Johnston, President of the Ottawa-based Chamber of Marine Commerce (which represents shippers as well as inland carriers), con-

**Pacific Gateway, cont'd on pg. 5**

## U.S. - China Initiate C-TPAT Pilot

In a move to increase security while enhancing the flow of trade, U.S. Customs and Border Protection and the General Administration of China Customs have begun a pilot validation program in China. The pilot will involve three Customs-Trade Partnership Against Terrorism (C-TPAT) importer partners whose supply chains predominately originate in China.

The U.S. companies were carefully selected based on several criteria including volume, product type and location of their supply chains in China. Their selection was approved by administrations in both the U.S. and China. Participation was voluntary.

China Customs headed the validation initiative using the C-TPAT minimum security criteria as a guide. CBP supply chain specialists were available to provide technical assistance and advice.

Prior to the pilot, the companies had been receiving minimum program benefits due to C-TPAT's previous inability to validate the security procedures they have in place. Now C-TPAT will use the information gathered to decide whether they can receive a higher level of benefits.

Both agencies will jointly evaluate the pilot and determine next steps. "It took several months of intense discussions to get to this point and we look forward to continuing this effort as we explore future cooperation," said C-TPAT Director Bradd Skinner. "It is a win-win for all. CBP and China Customs have the knowledge that all parties involved have good security practices in place and the companies can benefit by receiving fewer exams."

C-TPAT is an important layer in CBP's cargo enforcement strategy. Through this initiative, CBP is asking businesses to ensure the integrity of

their security practices and communicate and verify the security guidelines of their business partners within the supply chain.

Since 2003, C-TPAT has performed more than 7,200 total validations. In 2007, C-TPAT visited manufacturing and logistics facilities in 79 countries, validated 3,011 supply chains and certified 2,601 new members. Canada has committed to better alignment between CBSA's Partners In Protection program (PIP) and C-TPAT with the goal being to achieve mutual recognition.

I.E.Canada has been working closely with members to provide input to CBSA on enhancing PIP. For copies of I.E.Canada's PIP submission and the proposed transition strategy, please visit [www.iecanada.com/assoc\\_news/08/LetStDenis01-17-08.pdf](http://www.iecanada.com/assoc_news/08/LetStDenis01-17-08.pdf).

**Mexico, cont'd from pg. 1**



Rishchynski, Ambassador of Canada to Mexico and guest speaker at CCA's March 7 breakfast meeting. "It should be better leveraged as we face globalization's challenges and competitive issues."

He had this challenge for CCA members "How can each of us articulate the importance of Mexico and link into the greater drama of how we

position ourselves in the world?" He emphasized that the economic well-being of our country is inextricably linked to this hemisphere and that the re-opening of NAFTA would be a step backward. "The FTA resulted in a Canada-Mexico partnership that has defied even the wildest of expectations...Groups like CCA need to get this message out. The public should hear about the benefits from people like yourselves, not just politicians."

The Ambassador outlined these reasons for strengthening ties with Mexico:

- Mexico is a key partner in all facets of North American culture, politics and economics.
- Canada's 5th largest export market and 3rd largest source of imports.
- Over 1800 Canadian companies are located there.
- Bilateral trade has gone up over 400% since the FTA in 1993 (\$21 billion in 2006).
- The projected value of Canada's future economic relationship with Mexico is \$30+ billion.
- A secure and prosperous Mexico will be a democratic anchor in Latin America.

Although he acknowledged there are challenges in Mexico - such as the need to increase labour mobility beyond agriculture, an over-dependence on declining oil revenues, and border issues to the North and South, he emphasized that President Calderón and his reform-minded Cabinet are tackling these. Initiatives include a focus on improving public security and investment in basic infrastructure. The Ambassador urged Canadian companies to have patience when dealing with Mexico where results typically take longer to realize than in Canada and the U.S.

He added that it's important for Canada and Mexico to get "com-

**Mexico, cont'd on pg. 5**

## Emerging Issues, cont'd from pg. 1

tions for freight remaining on board (FROB). Concerns include the availability of the additional information that will be required, potential delays as information is conveyed, and confusion caused by differences in tariff classifications applied in the U.S. and Canada. It is expected that this new requirement will come into effect during the second half of 2008, and Canadian importers should be prepared.

I.E.Canada has made a submission on behalf of its members to CBP outlining the concerns of the trade community and asking CBP to work cooperatively with businesses to address those concerns. For copies of the submission, please visit [www.iecanada.com/assoc\\_news/08/10\\_2\\_Submission\\_03\\_18.pdf](http://www.iecanada.com/assoc_news/08/10_2_Submission_03_18.pdf).

The conference panel will address the proposed new Security Filing in the U.S. and how it will impact Canadian importers. Discussion will also address the future of the Customs - Trade Partnership Against Terrorism (C-TPAT) program and the impact it will have on importers and exporters. Make sure your business knows everything it needs to about changes to customs programs in the U.S. Learn from the experts and be sure to attend I.E.Canada's "Emerging Issues In Customs" conference.

For a complete copy of the agenda and the list of available sponsorship opportunities, please visit [www.iecanada.com/events.html#customs](http://www.iecanada.com/events.html#customs). Online registration is now available at [www.iecanadaregistration.com/Transaction/Conference.aspx?Conf\\_Id=84](http://www.iecanadaregistration.com/Transaction/Conference.aspx?Conf_Id=84)

Only a few spots are left for the Tradeshow. Please contact Jason Butkus at 416-595-5333 ext. 37 or email [conference@iecanada.com](mailto:conference@iecanada.com). For further information on the program or sponsorship opportunities, please contact Fée Kiessling at (416)

223-7072 or by email at [fkiesling@iecanada.com](mailto:fkiesling@iecanada.com).

### Mexico, cont'd from pg. 4

mon cause" issues in a position of strength before a new U.S. administration is in place. Among his recommendations are integrated production, greater institutional linkages, and smart choices regarding the usage of bilateral and trilateral agendas respectively, stressing that an acknowledgement of their fundamental differences is key.

Noting that Canada's political relationship has never been better, the Ambassador stressed that "Trade with Mexico is not just about the movement and selling of goods; it's about people and developing relationships."

I.E.Canada has a longstanding interest in Mexico, and has a strategic relationship with the Canadian Council for the Americas (CCA). Mary Anderson, President of I.E.Canada also serves as President of the CCA. Those with an interest in Latin America and the Caribbean are encouraged to visit [www.cccanada.com](http://www.cccanada.com) to learn more about upcoming events.

### Pacific Gateway, cont'd from pg. 3

curs that more attention will need to be paid in due course to eastern corridor projects such as the Atlantic Gateway and the Quebec-Ontario Continental Trade Corridor and Gateway currently still in the infancy stage. But he is not surprised by the greater emphasis today on the well-advanced Pacific Gateway undertaking. Otherwise, he considers that Canada's extensive network of commercial/investment counselors abroad can play an important role in touting the advantages of Canada's transportation system to foreign trading partners.

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### Export Controls, cont'd from pg. 2

erwise prohibit or impede Canadian exports where those exports would contravene foreign export laws. For example, while Canada will require an exporter to obtain an individual export permit for the purpose of re-exporting a U.S. origin good to Cuba, it also makes it an offense, in certain circumstances, for a Canadian corporation or its directors, officers, managers or employees to comply with an extraterritorial measure of the United States (or in other words, to comply with the Cuban trade embargo imposed by the United States).

Seizures, detentions, or governmental refusals to issue export permits for exports of controlled goods can have devastating commercial and financial effects on the non-compliant exporter. Once an exporter has been identified by CBSA for its failure to comply with export control regulations, its ability to effectively deliver goods to overseas customers can become severely constrained and, in extreme cases, impossible. In these cases, the CBSA will detain for inspection all shipments being exported by the exporter. The detention will necessarily lead to the exporter's loss of vital cargo space and to incurring costs in order to compensate the carrier. The detentions, during which time CBSA liaises with DFAIT, can span weeks or even months and, if the detention leads to seizure, will cost the exporter significantly in terms of lost business opportunity, lost sales, charges, penalties and fees.

The opportunities for Canadians to export and flourish exist and are being enhanced by FTAs and FIPAs. If they have not already done so, Canadian exporters need to take seriously their obligations and responsibilities under Canadian export law. A compliance review by a skilled professional advisor is an excellent place to start.



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## 17th Annual Conference & Trade Show Emerging Issues in Customs

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*Paul Ferley, Assistant Chief Economist, Royal Bank of Canada*

##### Future of U.S. Customs, Trade & Homeland Security

*W. Ralph Basham, Commissioner, U.S. Customs and Border Protection, Department of Homeland Security (invited)*

##### Canadian Government's Action Plan for Consumer Product Safety

*The Honourable Tony Clement, Minister of Health and the Minister for the Federal Economic Development Initiative for Northern Ontario*

##### Status Report on Canada Border Services Agency's Commercial Vision

*Greg Goatbe, Vice-President, Admissibility, Canada Bor*

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