

# tradeweek

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## Members Leading the Way



Shane Brown, partner, Gottlieb & Associates (photo courtesy of Perlman & Pogue)

I.E.Canada has earned a reputation as the leading voice of the trade community by informing and educating importers and exporters, and advocating on their behalf with respect to the issues affecting their commercial trading activities.

"I.E.Canada would not have such a

strong voice without supportive and involved members," says Mary Anderson, the association's president. "We rely on members to help us to identify issues of critical importance to Canada's trade community and to make persuasive representations to government."

Shane Brown, partner, Gottlieb & Associates, has been an active member of I.E.Canada since 1986, generously offering his time and expertise to help I.E.Canada prepare compelling submissions to government on numerous trade policy and legislative initiatives.

Most recently Shane has served as I.E.Canada's representative on the AMPS Subcommittee of the Border Commercial Consultative Committee (BCCC) in connection with the Canada Border Services Agency's (CBSA) review of the Administrative Monetary Penalty System (AMPS). Shane assisted I.E.Canada in drafting its initial submissions in respect of the AMPS review, has participated in numerous Subcommittee meetings and has updated members of the Customs & Legislation Committee

*Shane Brown, cont'd on pg. 4*

### Upcoming I.E.Canada Events

I.E.Canada has developed a complete series of events, seminars and conferences for the next five months. Please mark the date for any you are interested in attending!

#### Workshop Series

Cost Saving Strategies in Your Customs Process & HS Classification  
December 4, 2008 – Montreal  
December 8, 2008 – Winnipeg

### BCCC Update

*The following article was written by Carol Osmond, vice-president, policy, I.E.Canada.*

The Border Commercial Consultative Committee (BCCC) met in Ottawa on November 4-5, 2008. The meeting was chaired by Cathy Munroe, who succeeded Greg Goatbe as vice president, admissibility of the Canada Border Services Agency (CBSA). The meeting was also attended by Deirdre Kerr-Perrott, the new vice president, innovation, science and technology. Cathy stressed the value of the BCCC and her personal commitment to continuing and improving the BCCC as a consultative forum.

Following are highlights from the meeting. Copies of the presentations containing additional information are available on the Members Only section of the I.E.Canada website under "BCCC."

#### Systems Outages

Christine Payant and Paul Miller of CBSA provided a report on CBSA's recent efforts to address systems outages. CBSA recognizes the serious disruption that recent outages have caused. CBSA had a technology SWAT team, including external experts, review its system over the summer. A number of anomalies were found and have since been

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## BCCC Update, cont'd from pg. 1

fixed. Further improvements are planned.

CBSA also proposed the creation of a BCCC subcommittee to address contingency planning during a system outage. The subcommittee met via conference call on November 18, 2008 and will hold its first in person meeting in Toronto on December 9, 2008. Several I.E.Canada members have volunteered to serve on the subcommittee.

### Fumigant Testing and Ventilation

Jim Moram from the Canadian Shipping Federation and André Hurtubise of CBSA provided updates with respect to fumigant testing and ventilation of marine containers pulled for inspection.

Mr. Hurtubise reported that to alleviate delays CBSA is now employing new testing technology, the Syft™ Voice 200 unit, at four maritime ports (Vancouver, Halifax, Montreal and Toronto), which should avoid the cross-contamination and false positives that resulted with the use of Dräger tubes. CBSA has also commenced the procurement process for advanced ventilation technology.

In terms of ongoing issues from industry's perspective, Jim Moram stressed that CBSA has until spring to resolve the ventilation problems as ventilation becomes more difficult in warm weather. He also raised concerns about CBSA's practice of drilling holes into containers for testing purposes and patching them with rivets. This practice, which contravenes the IMO Customs Convention on Containers, damages the containers leading to repair costs, can result in damage to contents and raises security concerns.

In his presentation, Jim Moram raised the related issues of financing of examination centres, which

are currently financed through inspection fees, and the lack of performance and operational standards.

### Re-sealing Policy for Exports

Effective October 15, 2008, CBSA began affixing an ISO/PAS 17712 compliant high security bolt seal upon completion of CBSA examinations of shipments being exported from Canada.

### Contingency Planning

Stuart MacPherson of CBSA outlined a concept that has been developed for identifying priority goods in the event of a border disruption. This process would involve consultations with stakeholders through industry associations, such as I.E.Canada. The proposed concept will be discussed at a Contingency Planning Subcommittee meeting to be held in Ottawa in mid-December, with a tabletop exercise to take place in Toronto in March 2009. Mr. MacPherson indicated that CBSA is trying to generate interest in the United States to develop a similar process. He also admitted that CBSA has not yet worked out a means to move trucks carrying priority goods to the front of the line.

### Business Simplification

Peter Boutilier of CBSA reported that CBSA has achieved the 20 per cent goal under the paper burden reduction initiative by eliminating obsolete, non-essential and duplicated requirements; streamlining certain processes; and revising certain policies and forms to make them clearer. Mr. Boutilier went on to outline future objectives under the business simplification initiative, beyond the paper burden reduction.

### OGD Single Window Initiative

Raymond Bédard reported on the status of the OGD Single Window Initiative. Among other progress, he noted that a consultation strategy has been drafted that must now be reviewed and approved by

CBSA senior management. Private sector participants in the meeting stressed the importance of OGDs consulting with their stakeholders with respect to development of their responses to the single window initiative, including the data elements they will require.

### eManifest

Glenda Lavergne and Caron Wilson of CBSA provided an update on eManifest. Much of the discussion focused on the next plenary of the External Stakeholder Partnership Network (eSPN), which CBSA had proposed for early December. At the next plenary, CBSA plans to present its proposals with respect to controversial issues, such as First Point of Arrival and the importer admissibility data set, and seek feedback from the trade community before finalizing its policies. The private sector participants at the BCCC urged CBSA to postpone the plenary to ensure that its proposals were fully developed and could be made available to the trade community in advance so that adequate consultations could take place within associations and participants could attend the plenary prepared to give their feedback. Since the BCCC meeting, CBSA has announced that it will postpone the plenary until February 2009.

### Brokers Licensing and Account Security

The Brokers Licensing and Account Security Working Group met on November 3, 2008 in Ottawa. The status report given by Kathleen Pomrenke covered the reconstituted Licensing Advisory Committee, which met for the first time in Ottawa in September 2008; changes to the GST Option implemented in April 2008; and changes to account security review implemented in spring 2008. CBSA will also implement revised procedures to address importer non/late payment in April 2009. Members of the working

## 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.*

### Gateway Realities

Much attention has been paid in the past few years to developing Canada's Asia Pacific Gateway, and the most concrete results have been the establishment of a superport on British Columbia's Lower Mainland (Port Metro Vancouver) and the emergence of Prince Rupert as a potential major player in the container trades. In the meantime, the Atlantic Gateway concept is sputtering along while the government-backed Ontario-Quebec Continental Gateway and Trade Corridor initiative has been showing steady progress.

Regarding the latter, a private industry study, released earlier this month following two years of consultations, makes some pertinent observations and is also commendably candid about realistic chances for the revival of regular container feeder services to the Great Lakes. Some 75 participants from 50 companies took part in the consultations.

Not surprisingly, the *St. Lawrence and Great Lakes Trade Gateway*

Study says that the vocations of Montreal and Quebec as respectively major container and bulk transshipment ports should be enhanced through significant capacity expansion in order to meet world maritime trade demand over the next 15 to 20 years.

"The fact that we were able to gather together as many participants and reach a consensus within three transportation modes deserves to be underlined," stated Madeleine Paquin, president of Logistec Corporation and chair of the St. Lawrence and Great Lakes Trade Gateway Leadership Council. She summarized the study's conclusions at a luncheon staged by the St. Lawrence Economic Development Council (SODES).

The strong endorsement of Montreal was based, in part, on its perceived excellent intermodal connections to key markets in the United States, notably the Midwest, and in central Canada.

"However, to handle growth, it (Montreal) will need to increase its container infrastructure as well as improve its hinterland connections," said Ms. Paquin, citing the study.

The Port of Montreal's current strategic corporate plan projects the tripling of container-handling capacity to 4.5 million TEUs by 2020. But the study stresses that steps should also be taken in the near future to alleviate bottlenecks in rail connections between Montreal, the U.S. Midwest and Ontario, to improve road access to intermodal facilities, and to deepen the channel on the St. Lawrence River between Montreal and Quebec City by one foot.

Regarding the dry bulk sector, the study notes that although various commodities can be cyclical in nature, demand for metallurgical coal, iron ore, nickel and copper, notably

from China and Asia, is expected to be sustainable for many years to come. Many bulk commodities going in and out of the Great Lakes need to be transshipped – that is, taken on or off large ocean-going vessels to be transferred onto or from smaller Canadian-flag ships.

The study affirms that the most suitable port for such transshipments is Quebec because of its deep harbour and strategic location. But with existing facilities running close to capacity, the study recommends that the federal government, through the Gateway Funding Program, should partner with private industry to markedly expand transshipment facilities at the Port of Quebec.

At the same time, Ms. Paquin indicated that the Council's Container Working Group, headed by David Cardin, president of Maersk Canada, "did not believe that it would ever be feasible to expect shortsea shipping of containers without year-round access to the Great Lakes."

Such access, in effect, is not possible because the St. Lawrence Seaway system of locks and channels is closed annually between late December and late March for maintenance and other tasks.

Last June, Great Lakes Feeder Lines (GLFL) launched a feeder service with one small vessel from the Port of Halifax, but the service has since been abandoned due largely to shipper commitments to rail service. Instead GLFL has shifted operations to spot business between Halifax, Newfoundland and St. Pierre and Miquelon.

Meanwhile, what holds some promise, at least as a seasonal service, is the November 27 trial shipment by barge from Hamilton of 70 containers of recycled secondary metals destined for India and Paki-

## Shane Brown, cont'd from pg. 1

on changes being considered by the CBSA. He has also taken feedback and suggestions from the association's members to the AMPS Subcommittee.

"Shane has been a strong and effective advocate for importers on the AMPS Subcommittee," says Carol Osmond, I.E.Canada's vice president, policy. "Shane not only brings his experience and expertise to bear, but also a keen personal interest and enthusiasm for the issues."

### AMPS

AMPS, which was introduced in 2002, is a comprehensive regime of sanctions designed to encourage compliance with trade and border legislation in Canada. The CBSA can assess monetary penalties against importers, exporters, brokers, carriers and warehouse operators for contraventions of the *Customs Act*.

### The AMPS Review

In late 2005, the CBSA launched a review of AMPS in response to concerns raised by importers, exporters, customs brokers and CBSA officials.

"There were complaints that there were about 250 contraventions as well as too many different penalty structures," says Shane. "There was also lack of clarity in the backgrounders providing administrative guidance into the manner in which the AMPS contraventions would be penalized," he notes.

"For example, are all classification errors on a B3 to be considered to be one contravention covered by one Notice of Penalty Assessment (NPA) versus each classification error on a B3 line being a contravention and subject to an NPA, and at which penalty levels?"

"In addition to the fact that there were too many penalties, penalty structures were often too complex and even CBSA officers were unsure

in many instances as to which contravention(s) should apply to a particular fact situation," adds Shane.

"As penalties could easily exceed the value of the goods involved, there was perceived to be a lack of fairness and consistency," says Shane.

The CBSA created the AMPS Subcommittee in late 2005 to facilitate the review. The Subcommittee includes representatives from various trade associations. As part of the review, the AMPS Subcommittee is addressing the following topics:

- The best means by which to promote compliance
- The development of a methodology for determining the risk associated with various non-compliant events
- The assessment of appropriate risk factors relating to security, health and safety, prosperity and Canada's international commitments
- A reduction in the number of AMPS contraventions
- A reduction in variations in penalty structures among contraventions
- Ambiguities in the contravention backgrounders
- Absolute versus strict liability
- AMPS training for CBSA officers
- The application of AMPS to the Advance Commercial Information (ACI) initiative, including eManifest
- Volumetrics
- Third party liability
- The best structure for handling 30-day correction requests seeking administrative withdrawal of an NPA
- Streamlined appeal mechanisms
- Penalty Reduction Agreements
- The provision of meaningful AMPS statistics to the trade community

The CBSA's Compliance Management Division (CMD) will issue recommendations for improving the penalty regime, reflecting the

Subcommittee's input.

### Simplifying the Contraventions

Apart from the immense number of contraventions, the private sector asserted that the AMPS penalties were unclear, complicated and that there was significant repetition within the penalty regime.

In response to these concerns, the CBSA's CMD will recommend that the 246 contraventions be collapsed and streamlined.

"It now appears that the number of contraventions will be reduced by much more than half, by combining those contraventions that present the same level of risk and are similar in type" notes Shane. There will also be greater clarity concerning what contraventions apply under certain circumstances.

In response to feedback from the AMPS Subcommittee, the CBSA is drafting new backgrounders for the modified AMPS penalties. These new backgrounders will be written in such a way that they can be easily understood.

### Addressing Volumetric Fairness

One of the issues that the CBSA and the trade community have been grappling with as part of the AMPS review is the issue of "volumetrics."

Volumetrics is a term that has been coined to cover situations where a party is subject to rapidly escalating AMPS penalty levels but generally has a high rate of compliance. For example, an importer with frequent or high volumes of imports may not have time to correct an error between the time the first and subsequent AMPS penalties, at a higher penalty level, are imposed. This is perceived to be unfair, where the person receiving the penalties otherwise has a high level of compliance.

## Shane Brown, cont'd from pg. 4

In light of these concerns, the CBSA is considering whether volumetrics can be incorporated into the penalty system to account for clients with excellent compliance records.

### New Quarterly Reports on AMPS

The Subcommittee recommended that quarterly reports be published on AMPS. The reports are intended to help monitor, examine, and report the penalties assessed.

Earlier this year, CBSA officials shared the format and content of the new quarterly report with the AMPS Subcommittee. Shane relayed suggestions from the Customs & Legislation Committee to improve the content of the report and the presentation of data.

The improved AMPS report, which will be accessible to the public, offers significantly more data than has been made available in the past. The report will provide statistics, analyze trends, and offer recommendations for future improvements. As a result, Canada's trade community will have access "to meaningful AMPS statistics," says Shane.

### Absolute Versus Strict Liability

The AMPS Subcommittee has discussed "whether AMPS, under existing legislation, is an 'absolute liability' regime where no defence of 'due diligence' is available or whether AMPS is a 'strict liability' regime where such a defence is available," says Shane.

The CBSA maintains it is an absolute liability regime. Shane Brown, Greg Kanargelidis, partner, Blake, Cassels & Graydon LLP, and others have strongly argued that present legislation only empowers a strict liability regime.

### Penalty Reduction Agreements

The Penalty Reduction Agreement (PRA) program has effectively been in a state of suspension and the Subcommittee is advocating rapid

functional application of PRAs under less stringent pre-conditions.

### 30 Day Requests

A single, national review committee is under consideration by the CBSA.

### Observations on the AMPS Review

"An ongoing problem from the start has been that essentially all of the AMPS Subcommittee documents can only be viewed by members of the AMPS Subcommittee and the BCCC," says Shane. "Therefore, it's not possible to share the documents with the Customs & Legislation Committee or its executive."

In addition to Shane, Carol Osmond, as a member of the BCCC, has been able to view the documents, as well as I.E.Canada members, Greg Kanargelidis, and Kristina Bryson, executive program manager of import compliance at IBM Canada. While Greg and Kristina represent the Canadian Bar Association and the Canadian Manufacturers and Exporters, respectively on the Subcommittee, these four have coordinated their involvement in the AMPS Subcommittee ensuring that I.E.Canada and the interests of importers and exporters generally are well-represented on the Subcommittee.

Nevertheless the association and other members of the BCCC and the Subcommittee have been advocating for broader public consultation. "The documents need to be seen by those outside of the BCCC AMPS Subcommittee prior to the adoption of the final proposals," asserts Shane.

### General Comments

"The Subcommittee is pleased with its progress in moving toward AMPS penalty structures that accurately reflect the actual risks associated with non-compliant events. The Subcommittee is also happy with CBSA representatives' willingness to reduce the variance among

and quantity of penalty structures," says Shane.

### About Shane Brown

Shane joined Gottlieb & Associates as a partner in September 2008. Although Shane's practice covers myriad Canadian customs and international trade issues, he spends most of his time addressing issues related to tariff classification, customs valuation, AMPS, duty and GST relief mechanisms, NAFTA origin, customs procedures, product marking, and regulatory compliance. He is particularly interested in those trade issues that allow him to draw upon his agricultural heritage and the knowledge he gained in the 1990s in international business marketing.

Before he joined Gottlieb & Associates, Shane had practised customs and international trade law at Gottlieb & Pearson. He was also vice president and general manager of Introcana Trade Services, Gottlieb & Pearson's paralegal customs consulting arm. (Although Gottlieb & Pearson recently dissolved, the firm continues on as Gottlieb & Associates.)

Shane has been exclusively involved in facilitating international trade since 1985. Over the last 23 years, he has provided consulting, legal, export-import management, and trade development services.

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

stan via Montreal. At Montreal, the cargo is transferred onto ocean vessels for the journey overseas.

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### Events, cont'd from pg. 1

December 9, 2008 – Saskatoon  
December 10, 2008 – Calgary  
December 11, 2008 – Vancouver  
January 19, 2009 – Markham

Events, cont'd on pg. 6

# Gottlieb & Associates

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Please check our website, [www.iecanada.com](http://www.iecanada.com), for event updates.

### 6th Annual Western Canada Conference

February 23 & 24, 2009 - Calgary, Alberta - Delta Calgary South

### 18th Annual Emerging Issues in Customs Conference and Trade Show

April 20 - 22, 2009 - Toronto, Ontario - Hilton Toronto Airport

For more information, or to register, sponsor or exhibit at any of these conferences, please visit [www.iecanada.com](http://www.iecanada.com) or call Jesse Arsenault, conference coordinator, at 416-595-5333, ext. 37 or 1-866-616-2243, ext. 37.

### BCCC Update, cont'd from pg. 2

group are currently reviewing and commenting on a D-memorandum outlining these new procedures that will be published shortly.

### AMPS Review

The AMPS Subcommittee also met the day before the BCCC meeting. An update on the AMPS review is contained in the article entitled "Members Leading the Way," which begins on page one of this issue of *Tradeweek*. At the BCCC, private sector participants stressed the importance of expanding the consultations on the proposed new AMPS penalty structure. Currently, much of the information about proposed changes has been provided on a confidential basis to members of the subcommittee and the BCCC.

### Events, cont'd from pg. 5

#### 4th Annual Food Forum

February 18 & 19, 2009 - Toronto, Ontario - Renaissance Hotel - Toronto Airport

I.E.Canada is inviting North America's food industry to attend "Food Supply Chain Safety," our fourth annual food forum. The two-day forum, Canada's premier event for stakeholders in the food supply chain, provides the opportunity for industry leaders and government officials to discuss and exchange views on current and emerging government policy and regulatory initiatives.

This year we are fortunate to have already confirmed Janet Beauvais, director general, Health Canada, and Dr. David Acheson, assistant commissioner for food protection at the U.S. Food and Drug Administration, as speakers.

Food safety and security have become leading issues for governments and businesses worldwide. The need for systems that both ensure the integrity of Canada's food supply and protect consumers from unintentional risk has come into sharp focus. If these issues are important to your organization you won't want to miss the food forum.

### Quebec Chapter Events

September 2008 to June 2009

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