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## The C-TPAT Security Conference



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*The following article was written by Karen Lobdell, director, trade security and supply chain services, Drinker Biddle LLP.*

U.S. Customs and Border Protection (CBP) held its annual C-TPAT Security Conference April 1-3, 2009, titled "Managing Risk in the

Global Supply Chain." The conference is only open to members of the Customs-Trade Partnership Against Terrorism (C-TPAT) program and is offered as a benefit to participants, providing two days of customized workshops and presentations by CBP leaders designed to provide training and insight to assist participants in maintaining effective supply chain security controls.

This article provides an overview of the key security topics covered at this year's conference and a glimpse of what CBP's vision of the program is for the coming year.

### State of the Program

The C-TPAT program continues to grow in numbers and currently stands at 9,128 certified members, with roughly 45 percent being importers. There are 300 new members so far in 2009 as companies continue to show interest in entering the program. Validations and revalidations continue at an accelerated pace with 10,994 validations completed to date – 2,598 of those being revalidations. Tier III status in the program<sup>1</sup> has been achieved by

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## I.E.Canada's Mutual Recognition Work

Mary Anderson, president of I.E.Canada, participated in the 2009 C-TPAT Security Conference in New Orleans. On April 2, 2009, Mary was one of three panelists who discussed the mutual recogni-

tion work being conducted between the Customs-Trade Partnership Against Terrorism (C-TPAT) program and the Partners in Protection (PIP) program.

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## Economic Outlook



Warren Jestin, senior vice-president and chief economist, Scotiabank

Warren Jestin, senior vice-president and chief economist, Scotiabank, will be the opening keynote speaker on April 20, 2009, at I.E.Canada's "Emerging Issues in Customs and Trade Compliance" conference. In his remarks, Scotiabank's chief economist will discuss recent global trends and how they are likely to impact Canada as well as:

- The U.S. Fed, Bank of Canada, and other central banks' policy rates for next year

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292 members. Conversely, CBP has suspended or removed 801 companies from the program to date as a result of security breaches or failed validations.<sup>2</sup>

During 2008, CBP focused its efforts on meeting the recommendations of the U.S. Government Accountability Office (GAO) report that indicated the program needed to be enhanced to provide more robust requirements and accountability. Some of the recommendations from the GAO included requiring CBP to consider third-party risk assessments conducted by members during the course of the validation process, better documentation of follow up on recommendations resulting from (re)validations, and enhancing CBP's ability to measure performance.

CBP took steps to address the GAO recommendations in 2008 and, as a result, the trade can note some improvements. For example, the turnaround time on validation reports has dropped from an average of 120 days to 50 days (with CBP looking to reduce that number further to an average of 27 days).

Although the trade was previously required to respond to (re)validation recommendations and action items within 90 days, this deadline was not traditionally monitored by CBP. The C-TPAT portal system will now generate electronic notices on due dates as a reminder.

The CBP Supply Chain Security Specialists (SCSS) are also incorporating third-party audits/assessments into (re)validations. Organizations such as the Business Alliance for Secure Commerce (BASC), the Transported Asset Protection Association (TAPA) and the Fair Factories Clearinghouse (FFC) are routinely used by C-TPAT members for various security audits and have been accepted by CBP as viable support programs to supplement a member's own efforts.

Finally, when looking at measurements, CBP has further analyzed the benefit of being a C-TPAT member with respect to CBP exams. In 2008, 83 percent of CBP exams (all types) were conducted on non-C-TPAT importers. Of the 17 percent that were conducted on C-TPAT members, 8.5 percent were Tier I members, 4.9 percent were Tier II members, and 3.6 percent were Tier III members.

### What Does the Future Hold?

CBP is making the program more stringent and expects members to be held accountable to the program requirements. Specifically, in 2009, Brad Skinner, director, C-TPAT/industry partnership programs for CBP, stated the following as goals:

- Conduct unannounced visits to C-TPAT members previously involved in an incident to verify that security practices have been updated to meet requirements.
- Based on the complexity of some supply chains, consider conducting multiple visits for evaluation of an importer's supply chain prior to providing the member with validation and associated benefits. Traditionally, an initial validation will include a visit to one U.S. site and one foreign site. Under the new approach, CBP could elect to visit more than two sites (*e.g.*, the initial validation could contain action items that would result in a "revisit" prior to Tier II status and benefits being granted).
- Provide members with an updated Best Practices Catalog to provide guidance for achieving Tier III status. A new Best Practices brochure was provided to attendees at the conference and, additionally, a 25-page addendum to the 2006 Best Practices Catalog has been posted on the C-TPAT portal. Both the addendum and brochure identify updated information on what is deemed a best practice based on input from (re)validations conducted over the past few years.<sup>3</sup>
- Develop an international strategy

with a vision of which countries CBP will proactively work with for mutual recognition of partnership programs (*e.g.*, Canada's Partners in Protection program).

- Provide more focused outreach to trade with respect to program requirements. An example would be posting CBP videotapes of this year's workshops at the conference on the C-TPAT portal for members to review and use for ongoing training purposes.
- Refine the C-TPAT Portal functionality. Although CBP did redesign the secure portal over the past year to incorporate changes suggested by the GAO, the agency is looking for input from members on how the portal can be improved. An entire workshop at the conference was dedicated to the portal and suggestions were readily accepted. Going forward, CBP would like the portal to provide automated reports, a supply chain security workflow, on-line tutorials, and revised company and security profiles. Although there are no timelines established, it is clear that CBP is looking for improvements in this area.

### Additional Points of Interest

In addition to providing an in-depth update on the current status and future of the program, CBP provided additional insight into the following areas:

- Congress continues to be very supportive of CBP's efforts with respect to security initiatives. This is reflected in the fact that in the past four years, Congress has doubled budget appropriations for the agency.
- Validations in China are still problematic and, although 18 joint validations were conducted last year, there is no timeline currently as to when further joint validations will be permitted.
- Security concerns at the southern border have escalated tremendously over the last year, and CBP is asking C-TPAT members to assist with this

## 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.

### Container Trends Go South

The global recession has begun to heavily hit Canada's top two container ports, Port Metro Vancouver and Montreal, which previously had resisted the downward pattern of U.S. competitors. Halifax, for its part, continues to fight an uphill battle. To a large extent, an overall turnaround will depend on the timing of economic recovery in Canada, Europe, Asia (especially China) and the United States.

Latest figures show containerised cargo at Port Metro Vancouver (PMV), Canada's biggest port and Pacific gateway, declined by over 20 per cent in the first two months of 2009 versus a year ago.

"It's not surprising, but still disappointing," said Chris Badger, chief operating officer. "The lower numbers reflect the drop in maritime trade with Asia plus the impact of diverted cargo during the recent uncertainty over labour negotiations with the dock foremen."

Box volume in January and February of this year amounted to 311,839 TEUs compared with 397,348 TEUs a year earlier. This represents a 22 per cent drop. Import containers plunged by 27 per cent while export boxes fell by 15 per cent.

In light of the global recession, Badger indicated that PMV's container throughput for all of 2009 could decline by as much as 7 per cent. Last year, PMV virtually matched its 2007 box performance, handling 2.5 million TEUs.

After posting another container record in 2008, despite the accelerating economic decline worldwide, the Port of Montreal saw its container cargo plunge by 15.5 per cent in the first two months of 2009 to 215,668 TEUs.

About half of Montreal's container business originates with box shipments to and from the U.S. Midwest and Northwest. In other words, as the U.S. economy goes, so goes Montreal's container activity to a big extent.

Last year, Montreal's box throughput had climbed by 7.2 per cent to 1.5 million TEUs. This marked the highest growth by any port on the East Coast of North America.

Montreal has an interim chief executive, Sylvie Vachon, who was vice-president, administration and human resources, prior to the recent dismissal of Patrice Pelletier amidst reports of increasingly strained relationships with members of the port board and port users.

The port's ambitious \$2.5 billion Vision 2020 plan to triple container capacity to 4.5 million TEUs will remain intact, but port spokesman Jean-Paul Lejeune has acknowledged that there will likely be some fine-tuning to reflect current global

economic and financial conditions.

At the same time, too, Montreal, like other Canadian ports, has applied to the federal government for infrastructure funding made available under various existing and new programs.

Meanwhile, the outlook at the deepwater Port of Halifax, whose total and container cargo dipped sharply in 2008, is far from being all negative. Last year, it enjoyed a strong performance in the breakbulk, ro-ro and cruise sectors.

While the port's container volume fell by 21 per cent to 387,000 TEUs, the world's third largest container line, CMA CGM, recently started a new service connecting Canada and the U.S. with the Caribbean, Central America, South America, and Australasia. A 1,100-TEU capacity vessel is fully equipped to carry reefers and dimensional cargo – both promising markets for Halifax.

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

- When a rebound can be expected for the Loonie
- When the massive doses of fiscal stimulus will begin to gain traction in North America and abroad
- The U.S. economy and his forecast for recovery
- His prediction for commodity markets
- His observations on the 'flight to liquidity' that has been supporting the U.S. dollar and keeping bond yields near historic lows

I.E.Canada's second largest event will run from April 20-22, 2009, at the Hilton Toronto Airport Hotel located at 5875 Airport Road. One-, two- and three-day packages are available.

For a copy of the brochure, please visit [www.iecanada.com/events.html#18th\\_annual](http://www.iecanada.com/events.html#18th_annual). We look forward to seeing you at the event!

## What's Up with Committees?



Amesika Baëta, committee director, I.E.Canada

*The following article was written by Amesika Baëta, committee director, I.E.Canada.*

**I.E.Canada's Export Committee (EX)** was created last fall after an overwhelming response from members indicated there was an increasing need to address export related issues within the Canadian government and the trade community.

The mandate of the committee is to assist I.E.Canada members to understand Canadian export requirements with regard to uncontrolled and controlled exports; provide a communication channel to various government agencies, specifically the Canada Border Services Agency (CBSA), Department of Foreign Affairs and International Trade (DFAIT), and Public Works and Government Services Canada (PWGSC); and share valuable information between members. With over 25 active members, the committee is comprised of members from a variety of different industries such as IT & Electronics, Machinery Equipment, Financial, Textile and Apparel, as well as service providers.

Under the leadership of the committee's co-chairs - **Joy Nott**, vice-president & managing consultant at JPMorgan Global Trade Ser-

vices, and **Carol Buckton**, senior director, export control and customs at Siemens Canada Ltd., the Export Committee has been working diligently to address export related issues and concerns of members. With clients in both Canada and the U.S., Joy brings over 20 years of experience in customs compliance and international trade to the committee. She advises clients in meeting the requirements of the North American Free Trade Agreement (NAFTA) for goods imported into Canada and the U.S., as well as Canada-Chile Free Trade Agreement (CCFTA) and the Canada-Israel Free Trade Agreement (CIFTA) for goods exported from Canada to Chile and Israel respectively. With over 20 years experience as well, Carol Buckton has worked tirelessly to ensure that all Siemens Canada operating companies are compliant with all government requirements, as well as provide support and guidance to Siemens' U.S. Operating companies. She has also concentrated her efforts recently on FAST, CSA, PIP, C-TPAT and e-Manifest as well as worked to ensure that Siemens Canada meets all the necessary requirements presently, and in the future.

In order to develop greater visibility of export issues and the EX committee itself, Joy and Carol participated in a CBSA Business Simplification Working group meeting on March 10, 2009, on behalf of committee members. Historically, this working group has primarily focused on imports, thus this meeting provided a valuable opportunity and forum for the EX committee to present its key issues and concerns to government officials within CBSA and DFAIT, in particular, Steven Goodinson, deputy director, permits and enforcement, Export Controls.

EX Committee members developed the following six issues as key priorities which Joy and Carol presented during the meeting: **OGD**

**Single Window Initiative** – There are many Canadian government departments, such as DFAIT, Health Canada, Canadian Heritage and Canadian Nuclear Safety Commission, which influence exports. Thus, the EX committee insisted that better coordination between the departments is required on all the relevant export regulations that may impact commercial exports. Committee members suggested that CBSA be the coordinating body and set up an Export Client Management system, similar to CSA program for importers, a resource that an exporter can refer to for help and information.

**Goods Permit Regime** – Canada is falling behind other countries in its controlled goods permit regime. The speed in which the Canadian government is making changes compared to other countries in the international arena may cause negative economic impacts to Canadian exporters. For example, the amount of time it takes to update Canada's Export Control List to match the Wassenaar Arrangement puts Canada out-of-sync with the U.S. and other countries. Canada's export permits to all destinations also make trade more difficult as they act as a non-tariff trade barrier for Canadian companies. **Export of Technical Data Requirements**

**Needs Clarity** - More clarity is required on how to request "quantity" on an export permit for technology exported electronically. Committee members suggested that DFAIT provide a bulletin or notice to the companies explaining how to operationally handle this requirement. Further clarification was also noted with respect to whether General Export Permits (GEP) apply to technology transfers. **Restricted Party Listings and Requirements to Screen Need Clarity** - Canada has economic sanctions with numerous countries, which often include listings of individuals determined to be "designated persons" by Canada. Canadian exporters are unclear as to

*Committees, cont'd on pg. 6*

## C-TPAT, cont'd from pg. 2

challenge by ensuring that supply chain security controls are applied on exports to Mexico as well as imports.

- CBP has been conducting a small pilot over the past year with 10 Tier III members with respect to a C-TPAT export component. Participants were primarily in the aerospace and technology industries. Findings of the pilot indicated that criteria geared toward exports would be feasible; however, there is currently no timeline for moving forward on this.

- Mutual Recognition with trading partners continues to move forward. It is expected that Memoranda of Understanding (MOU) will be signed with Japan and Singapore by June 2009, and CBP continues to move forward with both the EU and S. Korea MOUs as well.

- CBP will be sponsoring an additional C-TPAT Survey in the second quarter of 2009, as well as hosting a Northern Border Highway Conference in August 2009. The conference will take place in Buffalo.

- The next C-TPAT Security Conference will be held in Los Angeles in March 2010.

### Bonus Security Updates (10+2)

Beyond discussion on the specific topic of C-TPAT, CBP reinforced the importance of other initiatives that support its layered approach to security — specifically “10+2” and the 100 percent scanning initiative.

Consistent with past communication from CBP, this year’s conference reinforced that a more robust C-TPAT program, along with additional advance data (10+2), will assist with the risk-based approach that CBP prefers versus the 100 percent scanning approach that has in the past been preferred by Congress.

Richard DiNucci, CBP director, secure freight initiative office, provided the following update with respect to the implementation status of the

Importer Security Filing (ISF/10+2):

- Between January 26, 2009, and March 25, 2009, over 300,000 ISFs have been filed by over 31,000 entities. By volume, some of the largest filings are being done by large importers; however, CBP has received filings by many small and mid-sized entities as well.

- During the first week, CBP received an average of 1,200 ISF filings per day. The agency is now receiving 9,500-10,000 filings per day (the total average number of entries filed per day is typically 30,000).

- CBP is receiving primarily complete data; however, the timeliness of the filings appears to be an issue. For all filers, there is currently a 30 percent accuracy rate on timeliness.

- The long-awaited Report Cards — to be called “Progress Reports” in the future — are expected by the end of the month. It is anticipated that the reports will be issued every 30-60 days. CBP is currently compiling data for these Progress Reports.

- The biggest data element errors between January 26, 2009, and March 25, 2009, (by volume) were duplicate ISF filing errors, invalid HTS, invalid ISF transactions (a different filer already used that ISF number or the ISF number had been previously filed or deleted), and invalid IOR numbers.

- Surprisingly, only 1 percent of the filings to date have taken advantage of the flexible options for interpretation of data and timing.<sup>4</sup>

Most importantly, Mr. DiNucci confirmed that there are still many importers that are not filing ISFs. Those companies need to start filing now. Companies that fail to file prior to January 26, 2010, and subsequently have problems or errors will find that CBP will not be sympathetic. As Mr. DiNucci clearly stated to the conference attendees, “if you come to me on January 25, 2010, and if you have made no attempt to file by then, there’s nothing for us to talk about.”

### Conclusion

Overall, the annual C-TPAT Conference provided a wealth of information for participants with respect to supply chain security. Although the benefits of the program are always subject to debate, it is clear that the program continues to grow and is an important part of CBP’s layered approach to securing our borders.

*The endnotes cited in this article are available on our website at: [www.iecanada.com/industry\\_news/2009/Endnotes.pdf](http://www.iecanada.com/industry_news/2009/Endnotes.pdf).*

*Karen Lobdell’s bio can be found at the following website address: [www.drinkerbiddle.com/klobdell/](http://www.drinkerbiddle.com/klobdell/). Should you require further assistance with regard to the information outlined in this article, please contact Karen Lobdell at (312) 569-1066 or [Karen.Lobdell@dbr.com](mailto:Karen.Lobdell@dbr.com).*

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“It was an honour to be a part of the panel and to have the opportunity to offer ideas about the process to foster mutual recognition of the two supply chain security programs,” says Anderson. As part of the session, Mary and Claude St-Denis, director, program development, Canada Border Services Agency, also discussed the benefits of mutual recognition.

Countries are connected by global commerce and security measures need to be consistent for global trade. Supply chain security programs like PIP need to be compatible with other global programs. To this end, I.E.Canada has strongly supported the work to forge a mutual recognition agreement between C-TPAT and PIP and has collaborated closely with the Canadian government in efforts to modernize PIP.

In a recent survey of I.E.Canada members, nearly half of the respondents said that they are members of the PIP program and almost half are enrolled in the C-TPAT program.

## Committees, cont'd from pg. 4



Joy Nott, co-chair, I.E.Canada's Export Committee

whether they are expected to screen against these lists of "designated persons" when exporting to other non-sanctioned countries. Committee members suggested that a Single Window Initiative program be created to assist companies in determining which countries they can export to without penalty. **Export Operations and Reporting Requirements Needs Clarity** – Exporters require better clarity from DFAIT with respect to the status of export permit applications. More transparency in the permit application process is desired, as exporters need to be able to communicate their supply chain timeline estimates with their foreign customers. Committee members suggest that a stronger partnership between exporters and DFAIT is needed in order to ensure Canada remains competitive.

### Voluntary Disclosure Program re-

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Carol Buckton, co-chair, I.E.Canada's Export Committee

quired for exporters of controlled goods – In February of this year, DFAIT announced a process to disclose instances of non-compliance with the *Export and Import Permits Act* in its new "Export Controls Handbook." DFAIT will review the circumstances of the case and will only refer certain cases to CBSA for further review. Cases sent to CBSA for review will most certainly be assessed with AMPS penalties. While the new DFAIT disclosure program is a welcome step forward to help Canadian exporters, according to Draft Memorandum D22-2-1, the CBSA Voluntary Disclosure Program does not apply to the *Export Import Permits Act*. The committee considers this to be problematic as it is unclear whether CBSA would be able to legally overlook instances of non-compliance in the course of an audit if those instances had already been

disclosed to DFAIT. While logically it seems that CBSA would not issue AMPS penalties in such a case, there is no legislative or regulatory backdrop to allow such a forgiveness of AMPS penalties. This leaves the decision of whether or not to issue AMPS penalties up to the discretion of the individual CBSA officer even though a disclosure had previously been made to DFAIT. While Committee members are grateful for the progress being made by DFAIT, it was suggested that a more coordinated Voluntary Disclosure Program be developed between DFAIT and CBSA for controlled goods to provide certainty to those Canadian exporters who wish to be compliant.

Joy and Carol emphasized the EX committee's willingness to work with the government regarding the six key issues and concerns outlined above and members' desire to be engaged and remain compliant with regard to the necessary export requirements. The CBSA working group was grateful for the opportunity to hear the committee's issues, however were not prepared to address them at that time. They did express a strong interest in working with exporters to address and resolve these issues. The EX Committee will continue to tackle these issues and work with the relevant government departments to address them accordingly in moving forward.

If you would like more information about the Export Committee or any of I.E.Canada's other committees, please contact Amesika Baëta, committee director at [abaeta@iecanada.com](mailto:abaeta@iecanada.com).

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