

**Departmental Advisory Committee on
Commercial Operations of
Customs and Border Protection and Related Homeland Security
Functions
(COAC) Quarterly Meeting
August 7, 2008
The Museum of Flight
Seattle, WA
8 AM – 12:00 PM**

Opening Remarks:

W. Ralph Basham, Commissioner U.S. Customs and Border Protection (CBP)

Timothy Skud, Deputy Assistant Secretary Tax, Trade and Tariff Policy, U.S.

Department of the Treasury

Stephen Heifetz, Deputy Assistant Secretary for Policy Development, Department of Homeland Security (DHS)

Bruce Leeds, Boeing, COAC Trade Spokesperson

Motion to Approve the Minutes from May 09, 2008 and passed.

Don Huber with GE is the newest member to the COAC to replace Chris Cook.

Customs-Trade Partnership Against Terrorism (C-TPAT) Programs:

**Bradd Skinner, Director, Industry Partnerships, Office of Field Operations (OFO),
CBP**

3 areas discussed:

1. Metrics:

As of 7-21-08

8527 certified C-TPAT Partners– 600 new companies joined; added Buffalo and Houston to the C-TPAT field offices whose focus is primarily on Canada (CA) and Mexico (MX) supply chains. 8519 total validations conducted to date of which 1285 are revalidations. 1916 Validations conducted this year alone – expected to reach 3200 total. CBP is taking actions to suspend companies who fail their validation. 593 members removed – ½ are hwy carriers. Are revalidating MX hyw carriers to ensure they improve. 267 Tier 3 Import of Record (IORs) currently.

Cycle time on validations: early on there was quite a delay. Now, however, the latest news is that the validation is 60 days (model). But the reality is that CBP has reduced the cycle time from 100 days to issue the report to a partner - and is now taking an average of 45 days. 593 members have been removed. Half are highway carriers. Revalidating Mexican highway carriers annually. There are currently 267 Tier III members.

CBP is working on mutual recognition with other countries, but question is, what does this mean?

2. Mutual recognition (MR)

Commissioner Basham has signed new arrangements with Jordan and Canada. These are in addition to the ones previously signed – e.g., New Zealand. CBP continues to work with the European Union (EU) on supply chain security and hopes to sign a mutual recognition agreement with the EU by next year. CBP has been working side by side with Japan on joint validations and hope to have a mutual recognition agreement completed by end of this year. CBP is also looking at Singapore and expect that to work out from a mutual recognition standpoint.

Re: Canada – CBP is working on one set of rules with Canadian Customs for companies to deal with. There are about 1000 common members in both of the USA and Canadian Supply Chain Security programs. CBP may permit Canada to conduct the validations and is working on operational details to permit companies to share their status with New Zealand, Canada and Jordan.

3. Benefits:

Bradd Skinner presented a DRAFT on CTPAT Benefits – what does this mean for the members. Wanted to bring all existing benefits into one document and to this share with the trade community to better educate companies as to whether CTPAT is for them and to better quantify the value to them. The document includes a discussion of the University of Virginia (UVA) study and the collateral benefits of participating, such as a reduction in pilferage. He said CBP will continue to examine benefits and offer additional benefits in the future that are practical to the program.

This is a draft and he is looking for comments from COAC, as he wants to roll this out eventually.

Cycle time to the validations: some lag time on validation reports. Reports must be completed within 60 days and returned to the C-TPAT partner. CBP went from 100 days on average to 45 days currently.

Lisa Shimmelfenning, Walmart: Will review with CTPAT Committee and will get back to Bradd with our comments.

Curtis Spencer, IMS Worldwide, on the 3PL document – COAC reviewed the 3PL document and completed the review and editing. He asked that CBP attempt to review and approve and post to the CBP website by next COAC meeting. He made a motion to approve the document and submit to CBP. The motion carried.

Third Party Validation Pilot – Bradd stated that this came about as a result of the Tier 1 Companies (306) that were stuck with Tier 1 status in China. Only 28 Companies agreed

to participate in the pilot. The information was completed and submitted to CBP, but unfortunately only 4 companies passed the validation while the other 24 did not and had over 200+ action items to address. Bradd said part of the reason more Companies did not participate was a concern over proprietary info and because they had to cover the costs of the 3rd party validation. The reports from the pilot are in review by Congress currently.

Tony Barone, Pfizer Inc., asked if there is an effort to coordinate Transportation Security Administration (TSA) and CBP's efforts on screening and how the two programs could interact. Stephen Heifetz said they understand the need to ensure consistency. Tony noted that the TSA Screening Requirements go into effect in August of 2009. Stephen said the fact that there are 2 programs does not preclude the effort to harmonize. Commissioner Basham suggested bringing in the TSA and asked COAC to pull together a group to start looking at this. Stephen agreed the DHS should look at how they can pull these groups together to make it less burdensome on the trade. Bruce Leeds replied that we would task the CTPAT Subcommittee with this new challenge.

Curtis raised the question related to the need to permit mutual recognition to apply to the situations where if a company is in CTPAT then it would automatically be accepted de facto by countries that have a mutual recognition agreement with the USA. Bradd Skinner said this is a Customs to Customs Arrangement – but the members have to still apply to the host country's administration to participate. CBP is looking at whether the supply chain security programs are comparable.

Automated Commercial Environment (ACE) Program Status and International Trade Data System (ITDS):

Lou Samenfink, Executive Director, Cargo Systems Program Office (CSPO), Office of Information Technology (OIT), CBP

CBP had hoped to replace the Vessel and Rail e-manifest system by October.

2 years ago – CBP had new programming for Vessel and Rail systems – issues with testing the new software have delayed the implementation of having this new software fully operational. Hope that by December, the government will have a system that the Trade can participate in the testing – that pushes the deployment date for these systems to April, May or so of next year.

The Entry Summary Processing deployment from Jan of 09 is also pushed out to after the rail and vessel pieces are completed. It will probably be pushed out until one month after that.

Alison Reichstein, Hewlett Packard – does this delay provide any accommodation for 10+2 – CBP hopes to have that in place by December?

Is there a measure in ACE to identify how accurate and complete ACE is versus ACS? Lou said he thinks it is close and he will get back to the group with a report on any gaps.

Lou said there needs to be a method to coordinate the two systems but he said that there will be no way to promise that 100% of what's in ACS is in ACE.

Tim Skud – Impact on ITDS of ACE Delays: Not a lot of ITDS in this release but obviously delays to Other Government Agencies (OGAs) and to the single filing window to the trade. The other impact from program mgmt – puts more of a burden on documentation and tracking. In other words as folks leave the teams and come on board need to document the efforts of each agency and that there needs to be a tracking effort of goals accomplished and those still open.

Sam Banks, Sandler Travis Trade Advisory Services – delay in ACE is small compared the effort to identifying other government agencies' business practices.

Tim Skud: Results from resistance to change and a reluctance to permit CBP to take the lead in areas the OGAs perceive as their core competencies – some agencies are fully engaged; other aren't but there certainly has been progress. Additionally, contractors often doing good work but are trying to do work that they have no real power to dictate. We need to force the OGAs to fill the vacuum.

Import Safety Initiatives:

Cathy Saucedo, Director, Import Safety and Intra-Agency Requirements, Office of International Trade (OT), CBP, addressed the effort of the interagency working group; it is active and will implement import safety action plan. A lot of progress has been made – CPSC Reauthorization Bill is supposed to be signed by President possibly next week – huge impact on lead and toys and there will be new penalties. There are over 20 regulatory packages expected in the next year or so. This is on the horizon for CBP.

Importer Self Assessment (ISA) Module to include a Product Safety Component – could receive Consumer Product Safety Commission (CPSC) benefits for mandatory standards. Working with CPSC to id good IOR Safety Practices – want it to be administered on a Company basis not commodity basis. Doing some foreign factory visits. Will solicit new members in the future – only ISA members can apply. CPSC only has 9 officers in the field currently but this will be increased to 50 officers. Ann Marisich is working with this from an audit perspective. Would also like to include Food and Drug Administration (FDA) standards.

Barry O'Brien, Hasbro – his point is he hopes that factories – once validated for product safety hope it will not be validated over and over again. Once certified by a third party – hope to be able to pass those records on to the Customer and the Customer can rely on that effort that the product is safe.

Tony Barone: Counterfeit Medical Devices and Medicines – Discussed a “Trusted Importer” program to certify quality, safety and security and hope CBP and FDA will embrace this strategic framework. Trusted Certified IOR – should receive immediate

release electronically from both FDA and CBP and should be exempt from screening and exempt from targeted examination. Read a Document on this into the record.

Lacey Act Amendments –Cathy Saucedo, CBP and Kevin Harriger, Deputy Executive Director, Agriculture Operational Oversight, OFO, CBP:

Cathy said the Lacey Act is not a pest or disease issue – it is an illegal forestry act. USDA is the lead on this and Dec 15, 2008 is the effective date. This Act will require the name of the plant, the value, the quantity of the plant and the Country of Origin (COO) of the plant all must be declared at entry. There is a Harmonized Tariff Schedule (HTS) listing that list the chapters that will be regulated under the Act – should be available soon – 1/3 of the tariff will be impacted and includes sporting goods. There are 8000 lines that come in daily that will be required in the Import Declaration. Must state all COO's it could be if actual COO is not known at the time. Right now this is a paper form and so all 8000 lines that were paperless will NOW require paper and release cannot occur immediately. These are contained in Chapter 44,45,47 and 48. COAC will assist in trying to help CBP to make a case to remove the paper form, and workable. Peggy Rutledge, Greenlane Systems, offered to head up the effort. United States Department of Agriculture (USDA) does not have an automated feed into CBP's system the way FDA does. The cost to add the name via an electronic method would be hard to accomplish because of how lengthy the name of a genus or species is.

Geoff Powell, C.H. Powell can assist with the effort.

Motion to create this committee suggested by Peggy and motion carried.

Adrienne Braumiller asked about penalties – Cathy said there were penalties and they are exploring if any 592 penalties – AB will assist.

Mr. Powell is the AG Subcommittee Chair.

Kevin said are over 1500 genus and species of trees in the world that could potentially be recorded – wide net here.

Kevin provided Agricultural Program Update – Wood Boring Insect – emerald ash borer found in Virginia; established in the Midwest with over 20 million trees killed so far and millions more in danger – need increased enforcement of wood packing requirements.

CBP working with USDA's Animal and Plant Health Inspection Service (APHIS) to ensure that various initiatives are properly carried out on Lacey and on Wood Packaging, etc. CBP developed a master list of types/kinds/amounts of equipment & supplies for CBP Agricultural Specialists (AS)-staffed locations for each pathway & environment. We have since received funding for additional equipment and are currently procuring.

Received Stats on Wood Packing Material (WPM) in a handout.

Geoff – there is a report on the APHIS website. He noted there are different practices in various ports on WPM and COAC looks forward to working with CBP on this.

10+2 – Rich DiNucci, Director, Secure Freight Initiative (SFI), OFO, CBP

– Currently working on this with General Counsel (GC) at DHS prior to full review at Office of Management and Budget (OMB). Working with various Congressional Committees and Members and Staffers. Phase-In Concept is CBP's commitment. First Data Format went out in May and got comments back; 2nd version sent out on July 17th. There is a mailbox specifically dedicated to comments. Continue to work closely with TSN and the Office of Information Technology. They continue to work in Advance Trade Data Initiative (ATDI) and agreements continue to go forward. Expect the next version to be out shortly – please review and comment.

SAFE Framework – meetings in Brussels. Amendments to the World Customs Organization (WCO) DATA Set approved – Container Status Message (CSM) piece is deferred. The issue there is the utility of the CSM and CBP will continue to work with the WCO on this.

Bruce – we worked with Trade Support Network (TSN) on the Data Layouts – we believe that those comments are good. Motion to adopt the TSN Comments as COAC's position.

Bruce introduced an Industry Working Group – Account Based Filing for 10+2 and how it could work. Will share with CBP and put it on November Agenda. Security_filing_technical@cbp.dhs.gov is the mailbox.

Rich-Didn't provide a timeframe of when it is expected.

Secure Freight Initiative (SFI) – Rich said that they have provided two reports to the Hill and the challenges involved as well as the challenges within each country and even differences among ports within countries. Biggest Challenge is that technology needed is not there for anomaly detection. Equipment in terms of specs is that they have not been used in high volume ports yet. Also, issues with space and trades flow at various ports. Setting up the lane to do that is difficult when land is scarce.

Operational in Hong Kong (HK); should be operational in Oman and Korea; don't want to slow down cycle flows. Met last week with Pakistan and are setting up an Operation in Karachi. How do we deal with this law and meet requirements when resources are limited.

Mike Zachary, Thomson Associates – confusion in the trade re: scanning, screening, targeting, examination, etc. Read into the record Deputy Commissioner Jason Ahern's comments to Congress. Motion to adopt this position as our own, carried. We believe a risk-based approach is the correct way to proceed. Basham said that Secretary Chertoff agrees that the resources should strike a balance between containerized cargo and other areas – such as small pleasure boats.

CBP Trade Strategy – Brenda Smith, Executive Director, Trade Policy & Programs, OT, CBP:

Several issues here:

At May meeting CBP introduced the CBP Trade Strategy in a multi-level approach. Since May CBP moving towards being able to share the document on this – COAC received last week. They need our review and comments on an expedited basis and we must provide these by August 22nd. The implementation date will be Oct 1st, 2008. The full COAC is reviewing.

Second project- want us to go beyond the elements of the Document to assist CBP and its partners with implementation. How can we move this forward? Work together and provide some comments by November COAC Meeting.

Brad Shorser, Sears Holdings- Brad said we will put together comments re the draft and submit by 08-22-08. He thinks the 5 year plan is well thought out. Thanked Angela Downey on her excellent work.

Proposed Rules of Origin – Tim Skud, Briefed COAC on a phone call. Rules of Origin determine marking admissibility, tariff differences, Free Trade Agreements (FTA's) etc. Right now CBP is running two systems – a case-by-case basis through examination of past legal cases – have done this for over 200 years. Problem: it is subjective and the Court has difficulty consistently applying and trade has problems with predictability and reasonable care. Because of that CBP came up with a Decision Tree Basis – like the inputs and codify the existing body of law – run for 15 years and has had terrific results with this system. Revise less than 1% of the decisions. Rather than running two systems side by side – decided to move to more modern system – the system that already applied to 40% of the trade. Sixty Day Comment Period from Issue Date. There Are also 5 specific products that needed to modify to fit into the new system.

The new regulation would supersede the old ruling – bring it to CBP's attention during the comment period if there is a concern. – per Tim Skud.

First Sale – Assistant Commissioner Dan Baldwin, Office of International Trade – Withdrawing the First Sale Proposal because they need to focus on the Farm Bill Act. CBP is working on a yes/no question – is this the first sale? Will be required at the entry line level and will be electronic – simply use an “F” if it is the first sale and leave blank if it is not. Will be a field in Automated Broker Interface (ABI) for CBP form 7501.

How many IOR are using First Sale? Told International Trade Commission (ITC) that CBP does not currently collect the value method – i.e., Transaction Value (TV) as basis of appraisement would be problematic. Instead use the existing Trade Measurement

Program – by asking this question so that it is not required on every line item. Interim Rule should be out soon as it will be effective in August 20th.

Intellectual Property Rights (IPR) Enforcement Subcommittee – Barry discussed the work of the group and the importance of enforcement. Tony said without IPR enforcement is important to ensure that company's innovations continue. 22 members on this subcommittee.

Customs Bond Subcommittee –

Jevon Jamieson, ABF Freight – discussed the work of the subcommittee. Reviewing the bonding structure. Working with TSN on this issue.

Brenda Smith said they are open to basing bond amounts on a risk and offering benefits to CTPAT and ISA members.

Proposed Closure of the LA Drawback Center

Kim Marsho, Director, Trade Relations, Office of International Affairs and Trade Relations (INATR), CBP – reassigning the Drawback officers to San Francisco Office so drawback Specialists are not reduced. Will issue a Federal Register Notice before the office is closed; will include an opportunity to comment.

Fed Register on International Standards Organization (ISO) Seals today – effective October 15th. CTPAT has been using since October of 2005 so should not be too much of an impact.

Add Business Resumption to the Agenda per Curtis Spenser's suggestion – Commissioner Basham agreed.

Next scheduled COAC quarterly meeting (last meeting of the 10th Term), proposed for Thursday November 20, 2008, Washington DC.