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Securing The Supply Chain: Customs Moves To Safeguard U.S. Borders Against Terrorism

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In response to the tragic events of September 11, the U.S. Government has placed unprecedented emphasis on the security of the U.S. As an agency responsible for protecting the U.S. border, Customs' role in the fight against terrorism is critical. To quote Customs Commissioner Bonner at his Customs "Trade 2001" Symposium in November 2001, "Before the attacks that day, our main focus was on trade compliance. Since September 11, our overriding priority is trade security."

The doomsday scenario envisioned by Customs involves the introduction into the commerce of the United States of a shipping container containing a weapon of mass destruction. Customs physically inspects very few of the containers that hit U.S. shores every day, as most imported merchandise is released from Customs custody based on the submission of required paperwork. If a weapon of mass destruction could be introduced clandestinely into the legiti-



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mate international supply chain, then the probability that Customs would discover that container in the ordinary course of checking cargo is low.

As a consequence of its shifting priorities, Customs has sought the assistance of the trading community, believing that the highest level of security can only be achieved with the cooperation of the members of the entire supply chain — importers, carriers, brokers, warehouse operators, and manufacturers, etc. The most immediate and visible result is a voluntary program in which Customs and the trade industry are working together to maximize the security of the cargo that crosses the U.S. border.

C-TPAT

That new program, known as the Customs-Trade Partnership Against Terrorism, or C-TPAT, is a government-business initia-

tive in which importers voluntarily agree to take steps to increase the security of their cargo at every step of the supply chain, from the foreign manufacturer's facility through the actual entry of the merchandise into the commercial frontier of the U.S. C-TPAT was launched in mid-April with only a few "invited" low-risk, high volume importers. Since then, the program has been opened first to all importers and then to members of the transportation community — air, rail, and sea carriers, customs brokers, freight forwarders and non-vessel operating common carriers ("NVOCC").

According to Commissioner Bonner, C-TPAT will have two effects. The first is shorter wait times and fewer border inspections for low-risk cargo. The second benefit is more efficient security operations by enabling Customs to focus on high risk cargo.

Participants in the program must submit to Customs a signed C-TPAT Participation Agreement. Importers who sign the Agreement commit to (1) conduct a self-assessment of supply chain security using C-TPAT guidelines provided by Customs; (2) complete and submit a supply chain security questionnaire; (3) develop and implement procedures in accordance with the C-TPAT guidelines that strengthen security throughout the supply chain; and (4) relay the C-TPAT guidelines to every link in the supply chain. In return for the voluntary participation, importers will receive potential benefits from Customs, such as a reduced number of border inspections, which will reduce border wait times; an assigned account manager if the importer does not already have one; eligibility for account-based processes such as monthly or bi-monthly payments; and, an emphasis on self-policing, rather than intru-

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sive Customs verifications.

The agreements signed by the carriers vary according to the type of carrier (rail, air, sea, or NVOCC), but generally each carrier must agree to develop and implement procedures in accordance with C-TPAT guidelines that include security checks for employees and control over who has access to cargo, warehouse security, designation of one employee to act as a Customs liaison, and tight inventory controls. In return, Customs will consider a carrier's C-TPAT participation in making risk designations, assist with implementation of and improvements to the carrier's security procedures, and assign an account manager.

Despite the "voluntary" nature of this program, members of the trade community should be aware that, in time, security is likely to become as much a part of Customs' overall compliance measurements as classification and valuation. In fact, Cindy Covell, Director of Customs Regulatory Audit Division, said at the Trade 2001 Symposium, "Regulatory Audit's new challenge after September 11 is to incorporate the evaluation of security controls into the audit process." Membership in C-TPAT is already required for Customs' new Importer Self Assessment Program, and security could soon become part of the Focused Assessment, a type of compliance review in which Customs focuses on the importer's processes that pose the highest risk of non-compliance. According to Ms. Covell, Customs is "exploring ways to best incorporate supply chain security into our new definition of risk."

Impact On Customs And The Trade

In a nutshell, Customs believes that C-TPAT will allow it to segregate cargo into two categories: low risk and high risk. When low risk cargo is shipped through participants in C-TPAT, it will enter the U.S. with hardly any scrutiny by Customs. In contrast, Customs will intensely scrutinize the manifest information and the container itself when cargo is considered high risk, and in some cases this screening will occur before the containers reach the U.S.

In reality, however, the ability of the programs to safeguard the supply chain will hinge on whether the international business model truly adopts security as a core element. After all, for years companies have tried with varying degrees of success to secure the supply chain against theft. The premise of C-TPAT is that U.S. importers that participate in the program will use their best efforts and economic influence to safe-

guard their respective supply chains, from factory of manufacture through delivery to ultimate customer. While a company may be able to exert such influence and control over a foreign manufacturer if related in a corporate sense, will the threat of heightened U.S. Customs inspections of shipments originating at unrelated foreign factories that have not implemented appropriate security measures be much of a carrot to encourage those foreign factories to invest in security? The threat of lost business may persuade some factories to buy into security, but what if the importer's economy of scale does not provide it with the leverage to dictate this requirement to its foreign vendors? The majority of importers are not eight hundred pound gorillas.

While C-TPAT has not sent importers *en masse* scurrying to implement cargo security modules into existing corporate compliance frameworks, those that have not found much guidance from Customs, which seems to have adopted an *ad hoc* approach as to what constitutes an appropriate compliance regime. Clearly, the C-TPAT signatory must develop and implement procedural controls to monitor cargo when it is within the control of the signatory. Here, the Customs guidance documents provide some direction.

The problem, of course, is policing the rest of the supply chain. Must the C-TPAT participant visually inspect the facility or vehicles of, and study the internal controls of, each manufacturer, trucking company, warehouse, freight consolidator, and shipping line within its supply chain? Right now, the answer put forth by Customs is that where an importer does not have control over a facility, then reasonable efforts are to be used to secure compliance. Is simply sending your foreign vendors and logistics service providers a letter asking for confirmation that they comply with the Customs guidance documents (set out in questionnaire format) sufficient or is it merely the minimum standard necessary to insulate the importer from allegations that it is failing to live up to its requirements under C-TPAT? This is the weak link in the chain, the solution to which may lie in universal extension of and mandatory participation with the C-TPAT requirements by all entities in the supply chain.

Other problems flow from issues involving national sovereignty, confidentiality of information and cost of technology. For example, the extent to which foreign manufacturers can abide by the C-TPAT guidelines for manufacturers, which recommend that companies conduct background checks on

employees and prospective employees, may be a matter controlled by local laws and regulations. Another example involves the current drayage system in effect at the U.S.-Mexico border. Here, trailers are unloaded on one side of the border and placed in local warehouses. Drayage operators then transport the trailers through customs formalities at both borders, and deliver them to truckers or warehouses on the other side. These additional, and arguably irrelevant, links in the U.S.-Mexico supply chain create extra opportunities for terrorists seeking access to containers. But the drayage system is a product of national law, and until through trucking is universally accepted, trucking concerns will have difficulty accepting responsibility for this portion of the supply chain.

The confidentiality of manifest information is an issue in need of resolution. Currently, trade statistics reporting organizations can acquire via the Freedom of Information Act most of the manifest data elements, and in turn make this information available to subscribers. The Comprehensive Seaport and Container Security Act of 2002, a bill recently introduced into the Senate (S.2895), would make this information available only to the federal government, thus encouraging more accurate reporting of this information by shippers. The other issue involving manifests focuses on proposed regulations that will require that manifests be filed with Customs at least 24 hours before the vessel's departure date. Carriers will need to receive the packed containers at their marine terminals about 48 to 72 hours before estimated vessel departure in order to submit manifests to Customs 24 hours before the vessel departs. Historically, freight at rest at terminal warehouses has been a prime target for theft. It also creates opportunity for worst-case tampering.

Conclusion

Whether C-TPAT will provide any meaningful safeguards against the introduction of a weapon of mass destruction into an importer's supply chain is something that can only be measured by the actual interdiction of such weapons, or the failure to do so. That being said, members of the trade community should consider participating in C-TPAT, which promises the benefit of decreased cargo examinations. Consequently, members of the trade community who opt not to participate in C-TPAT should nonetheless consider their own security procedures and communicate the importance of security to all members of their supply chain.