Trade Security Initiatives: 2005 Summary and 2006 Expectations

The purpose of this client memorandum is to provide a summary of Customs and Border Protection’s (“CBP”) 2005 accomplishments with respect to trade security initiatives, focusing on recent updates discussed in various seminars, including the 2005 Annual CBP Trade Symposium (“Symposium”) and the CBP Departmental Advisory Committee on Commercial Operations (“COAC”). Furthermore, this memorandum will address what can be expected from CBP on the trade security front as we move forward into 2006.

I. CBP Accomplishments in 2005 and Priorities for 2006

The year 2005 has been a busy one for CBP with regard to trade security. Regarding the Customs-Trade Partnership Against Terrorism (“C-TPAT”), Former Commissioner Robert C. Bonner noted at the recent Symposium that over 5,300 companies have been certified as C-TPAT members (comprising 42% of the total value of trade); 1,105 have completed validations (representing approximately 21% of certified companies); and another 2,482 are currently undergoing validations. Although great strides have been made within the program, Bonner admitted that the program can be improved. Continuing forward with C-TPAT will require the following steps:

- CBP will continue to “push back the borders” on advance data gathering to a shipment’s true point of origin, with pilot programs such as the Advance Trade Data Initiative (“ATDI”) assisting in this goal;
- The World Customs Organization (“WCO”) Framework of Standards must be implemented;
- The “Green Lane” must become a reality for companies that (1) are C-TPAT validated; (2) use best practices as identified by CBP; (3) have cargo originate from a Container Security Initiative port; and (4) use container security devices that are able to indicate tampering.

In a meeting on December 1st, COAC proposed certain “green lane” benefits that CBP could offer to Tier 3 C-TPAT members. These benefits include: paperless entries (unless another agency requires a paper document); expedited drawback claims; zero security inspections (unless extenuating circumstances exist); expedited ruling request responses; and no penalties for late duty payments.

In addition to C-TPAT, CBP has continued to expand on the Container Security Initiative (“CSI”) in adding fourteen new ports in 2005, including Buenos Aires, which became operational on November 17th. This brings the total number of CSI ports to forty-one. On November 22nd, Oman announced that it will participate in CSI as well, probably becoming operational sometime next year. Pakistan likewise declared its intent to implement CSI at the Port of Qasim and other ports. CBP expects that at least ten ports will be added to CSI in 2006.

The goals of CSI will be met by:

- Using intelligence and advance automated information to identify and target containers that pose a risk for terrorism;
- Pre-screening those containers that pose a risk at the foreign port of departure using Non-Intrusive Inspection (“NII”) Technology before they arrive at U.S. ports; and
- Using smarter, tamper-evident containers.

Moving into 2006, Commissioner Bonner stated that CBP’s focus will remain on the five pillars of trade security: (1) use of advance information (e.g., 24-hour rule), (2) automated risk targeting, (3) advanced detection technology at U.S. ports of entry, (4) CSI, and (5) C-TPAT.

The priorities CBP has identified for 2006 include:

- Secure the borders
- Prevent terrorists from crossing U.S. borders
- Strengthen supply chain security
- Strengthen risk-based decision-making and planning
- Implement WCO Framework of Standards
- Increase mechanisms to facilitate trade and travel
Deploy technology
Strengthen CBP employee base and integrity
Unify as one border agency

Department of Homeland Security (“DHS”) Deputy Secretary Michael Jackson noted in his address to the Symposium that what has been accomplished to date could be considered the “first generation” of security. However, he suggested that the time has come to move to the “next generation,” which will include more focused and further detailed information.

One option being considered by DHS is the use of third party intermediaries, rather than government agencies, for data collection and analysis. The goal of using these intermediaries is to fuse the proper data from order to fulfillment in order to target risks more precisely. Referred to as “ACE on steroids,” limited details have been made available to the trade on this subject, but more information is expected from DHS in the coming months. It is, however, apparent that DHS expects to push more responsibility to the private sector in this area.

II. Impact of the WCO Framework of Standards on U.S. Importers and Exporters

Although the focus of U.S.-based companies to date has been on regulations and programs driven by CBP, implementation of the World Customs Organization (“WCO”) Framework of Standards (“Framework”) will have a large impact on how companies deal with their trading partners as well as foreign customs administrations in the future.

The Framework was unanimously adopted by 168 member countries in June 2005, taking supply chain security to a global level. As foreign customs administrations implement security standards similar to those currently existing in the U.S., companies exporting goods to the member countries should develop procedures to ensure they can meet the other countries’ requirements as well as those set forth by CBP.

The U.S., now moving into the implementation phase, will play a lead role in facilitating the implementation of the Framework globally. A “Private Sector Consultative Group” will be created as a way to obtain input on the Framework’s implementation. The 25-30 members of this group will be identified shortly and their first meeting is scheduled to take place before the end of 2005. In addition, CBP urges the trade community to become involved in taking the implementation of the Framework to a higher level. This can be done in any of the following ways:

- Help develop the new ISO 2800 standards
- Identify countries critical to your company and meet with their customs administrations to encourage fast implementation
- Be an active participant in industry associations providing input on the program
- Directly participate in programs that support the Framework (e.g., C-TPAT and CSI)
- Identify key issues that could stand in the way of implementation and communicate them through the right channels

In January 2006, the WCO will purportedly begin sending technical assistance teams to countries that have signified their intent to participate in the Framework. The purpose of the teams is to determine what, if any, infrastructure and equipment are needed to implement the Framework in each of these countries.

III. DHS Budget for 2006

The DHS 2006 Budget will provide $7.1 billion (an 11% increase) to CBP, with the following specific allocations to its trade security initiatives:

- $236 million for 1,000 additional Border Patrol agents and 300 operational/mission support personnel;
- $28.3 million for the automated targeting systems to enhance CBP’s targeting and risk analysis capabilities;
- $5.4 million for the expansion of the CSI program;
- $8.2 million to enhance CBP’s ability to conduct supply chain security validations;
- $125 million for Weapons of Mass Destruction Detection Technology, which allows CBP to screen all trucks, trains, airfreight, etc. with advanced radiation detection technology prior to their release.

IV. Proposed Legislation

The DHS semi-annual regulatory agenda identified the following CBP regulations relating to trade security initiatives, which are in various stages of completion:

- Container Seals, Target Date for Proposed Rule - 11/05
- Advance Notice Requirements for Aircraft, Target Date for Proposed Rule - 06/06
Advance Electronic Presentation of Cargo Data,  
Target Date for Interim/Final Rule - 02/06

In addition, the **GreenLane Maritime Cargo Security Act** (S. 2008) was recently introduced by Senators Patty Murray (D-Wash.) and Susan Collins (R-Maine) to improve cargo security into United States ports through $400 million in Port Security grants.

The bill proposes minimum security standards for all cargo containers entering the U.S. and requirements to strengthen current cargo security programs. It also notes the necessity of establishing the GreenLane, to be comprised of C-TPAT participants who voluntarily meet the highest level of security and in return receive actual incentives for participation. It has been praised by Dr. Stephen Flynn, a noted homeland security expert, as the “most comprehensive legislative initiative to tackle the challenge of ensuring that an intermodal container is not used as a poor man’s missile.”

The **Trust and Verify Cargo Shippers Act of 2005** (H.R. 4374), also recently introduced, seeks to provide for verification of security measures under the C-TPAT and FAST programs. Introduced by Edward Markey (R-MA) and Christopher Shays (R-Conn.), the bill provides that within a year of the Act’s enactment, the CBP Commissioner is to conduct on-site verifications of the security measures of each individual and entity participating in C-TPAT and FAST. In addition, the Commissioner is to establish policies for failing to comply with the C-TPAT program requirements that include probation or expulsion from the program.

V. Conclusion

With Commissioner Bonner’s official departure from office on November 23, 2005 and Ms. Deborah Spero’s appointment as Acting Commissioner until President Bush names a permanent replacement, the precise future of the aforementioned initiatives is unclear, but based on the DHS budget proposed for 2006 and the discussion at the Symposium, the C-TPAT and CSI programs will likely remain in the forefront of CBP’s agenda.

If you would like additional information regarding the status of the above programs and pending legislation, please contact Beata Spuhler, Attorney/Knowledge Manager at Gardner Carton & Douglas, at 312.569.1158.