

Project On Government Oversight

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Dear Member of Congress:

The Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more effective, accountable, open, and ethical federal government. In our efforts to further this mission, we want to bring to your attention two troubling self-policing programs—the Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) programs—administered by U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS). Inherent in this sort of self-regulation is a reduction of federal oversight of imported goods coming into the country. POGO believes that self-regulation programs, by their very nature, are unsound because they are not objective or reliable, and that they are ripe for abuse, placing U.S. citizens in jeopardy.

The first program, C-TPAT,¹ is a voluntary partnership between the government and the private sector created after 9/11 as part of CBP's efforts to ensure the security of imports. C-TPAT existed first solely as a CBP policy and then was outlined in more detail by Congress in 2006 following the passage of the SAFE Port Act.² Under that legislation, a C-TPAT company is certified by CBP to monitor its own supply chain security, and in exchange receives a number of benefits from CBP, including priority cargo searches and a reduction in cargo examinations.³

The second program, the ISA program,⁴ further allows importers to evaluate their own compliance with trade laws.⁵ According to CBP's own literature, "ISA keeps the company in the

¹ U.S. Customs and Border Protection, *C-TPAT Overview*, December 13, 2007.
http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_overview.xml (Downloaded December 10, 2009)

² Public Law 109-347, Secs. 211-223, "Security and Accountability For Every Port Act" or "SAFE Port Act," October 13, 2006.
<http://www.gpo.gov/fdsys/pkg/PLAW-109publ347/pdf/PLAW-109publ347.pdf> (Downloaded December 10, 2009)

³ Government Accountability Office, *Supply Chain Security: Feasibility and Cost-Benefit Analysis Would Assist DHS and Congress in Assessing and Implementing the Requirement to Scan 100 Percent of U.S. Bound Containers* (GAO-10-12), October 2, 2009, pp. 9, 13, 42.
<http://www.gao.gov/new.items/d1012.pdf> (Downloaded December 10, 2009)

⁴ Federal Register, "Customs Service – Importer Self-Assessment Program," Vol. 67, No. 116, June 17, 2002, p. 41298.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-15308 (Downloaded December 10, 2009)

⁵ On or about December 7, 2009, the Department of Homeland Security, Office of Inspector General, initiated an audit of CBP's Importer Self Assessment Program.

driver's seat."⁶ One DHS official stated that "[p]erhaps one of ISA's greatest rewards is that it offers far more business certainty. Without potential audits or other forms of government oversight, importers can focus on improving their core business and the efficiency of their own processes."⁷

CBP has stated that "ISA and C-TPAT are both based on the principles of public-private partnership and importer self-governance."⁸ As of the FY 2009 mid-year report, C-TPAT and ISA program participants accounted for 33% of all imports into the U.S. and approximately \$454 billion in revenue, which is about 50% of all import value.⁹ That means that one-half of the goods imported into the U.S. fall under the umbrella of C-TPAT and its self-assessment requirements. A business's self-policing responsibilities include communicating and verifying the security guidelines of the company's business partners within the supply chain to CBP. CBP maintains that this arrangement allows for a more secure and expedient supply chain, a reduction in border delay times due to cutting down on CBP inspections, and as a result CBP staff can attend to non-C-TPAT certified importers.¹⁰

Is this arrangement, however, causing a risk to security and revenue protection? POGO has been contacted by one insider who believes that the ISA program is too accommodating, providing the trade industry with too much control.

Heightened security concerns involving U.S. ports recently arose after DHS Secretary Janet Napolitano announced that CBP won't meet the 2012 deadline for radiation scanning of all imported containers coming into the country.¹¹ The scanning delay was claimed to be caused by limited technology, the economy, and diplomatic concerns. Others, however, are not so worried about the scanning delay. The Heritage Foundation has expressed concerns that the 100% requirement will slow down supply chains, thereby eliminating crucial benefits offered under the C-TPAT program.¹²

CBP seems to be in the vulnerable position of giving the import industry anything that it wants. The agency continues to push for growth in its C-TPAT and ISA membership despite an unproven record of success. POGO is unconvinced that a dearth of media reports about import

⁶ U.S. Customs and Border Protection, "Companies sign on to importer self-assessment program, join C-TPAT," *Customs and Border Protection Today*, September, 2003, p. 1. (Hereinafter *CBP Today*). <http://www.cbp.gov/xp/CustomsToday/2003/september/other/isa.xml> (Downloaded December 10, 2009)

⁷ *CBP Today*, p. 1.

⁸ U.S. Customs and Border Protection, Letter from Daniel Baldwin, Assistant Commissioner, Office of International Trade, to Timothy E. Strinden, April 9, 2009, p. 1.

⁹ U.S. Customs and Border Protection, *Import Trade Trends: FY 2009 Mid-Year Report*, May 2009, p. 32. http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/trade_trends/09_mid_yr.ctt/09_mid_yr.pdf (Downloaded December 10, 2009)

¹⁰ U.S. Customs and Border Protection, *Securing the Global Supply Chain: Customs-Trade Partnership Against Terrorism (C-TPAT) Strategic Plan*, November 2004, p. 2.

¹¹ Testimony of Department of Homeland Security Secretary Janet Napolitano before the Senate Commerce, Science, and Transportation Committee, *Transportation Security Challenges Post-9/11*, December 2, 2009. http://www.dhs.gov/ynews/testimony/testimony_1259938923345.shtm (Downloaded December 10, 2009)

¹² The Heritage Foundation, Jena Baker McNeill, *Disaster of 100 Percent Maritime Cargo Scanning Not Lost on Napolitano*, February 12, 2009. <http://www.heritage.org/Research/HomelandSecurity/wm2288.cfm> (Downloaded December 10, 2009)

violations or CPB safety and compliance data provided by the importers themselves, is cause to celebrate the safety of U.S. supply chains or compliance with trade laws.

Analysis of Shortcomings in CBP's Self-Policing Programs

While federal officials claim that C-TPAT and ISA are saving taxpayers money by reducing the resources necessary to monitor and regulate imports, POGO is concerned that these programs may in fact be endangering national security, losing import revenue, allowing the importation of defective or harmful goods, and resulting in companies circumventing import laws and regulations. Specifically, POGO has received insider information that importers non-compliant with trade laws and regulations have been approved and are applying for the C-TPAT and ISA programs.

There have been additional insider claims that ISA applicants are not tested to verify that the promised compliance controls have been implemented and are effective. This lack of ISA validation is similar to C-TPAT's lackluster validation process. According to a 2005 study by the Government Accountability Office,¹³ only one in ten C-TPAT companies was actually validated. In other words, at that time, nine in ten member companies were receiving benefits from the C-TPAT program without actually demonstrating that they deserved them. In addition, according to the same GAO study,¹⁴ the validation process was itself incomplete, not even covering the full range of security requirements. As the situation currently stands, C-TPAT offers a false sense of security—the status of security throughout much of the international supply chain is unknown because of the large gaps in CBP knowledge and oversight.

It must also be noted that a number of the known C-TPAT companies have committed serious trade violations in the past, yet have been granted membership into C-TPAT and ISA, without testing to verify their problems have been corrected.¹⁵ In fact, ISA reviews do not qualify as audits because of this lack of testing. A number of these “trusted companies” even appear in POGO's Federal Contractor Misconduct Database (FCMD) for violations of laws and regulations, showing that these companies cannot necessarily be trusted to follow the rules on their own, even when they are being monitored properly by outside regulators.¹⁶

¹³ Government Accountability Office, *Cargo Security: Partnership Program Grants Importers Reduced Scrutiny with Limited Assurance of Improved Security* (GAO-05-404), p. 4. (Hereinafter *GAO Cargo Security*).
<http://www.gao.gov/new.items/d05404.pdf> (Downloaded December 10, 2009)

¹⁴ *GAO Cargo Security*, p. 4.

¹⁵ Even a cursory web search can provide one with a wide number of trade violations by C-TPAT members. As examples, FedEx illegally exported U.S. equipment to a restricted entity, General Motors had an unauthorized export of technical data violation, and both General Motors and Motorola were found in violation of arms control regulations.

<http://www.ecustoms.com/vc/penalties.cfm> (Downloaded December 10, 2009)

<http://www.contractormisconduct.org/index.cfm/1,73,222,html?CaseID=897> (Downloaded December 10, 2009)

http://www.pmdtc.state.gov/compliance/consent_agreements/GeneralMotorsCorp.htm (Downloaded December 10, 2009)

http://www.pmdtc.state.gov/compliance/consent_agreements/MotorolaCorp.htm (Downloaded December 10, 2009)

¹⁶ POGO Federal Contractor Misconduct Database (FCMD), <http://www.contractormisconduct.org/>. The FCMD lists instances of misconduct among the government's top contractors, including FedEx, (#43), BP (#60), Daimler (#98), and General Motors (#99).

The importance of CBP's ability to effectively secure our ports should not be taken lightly. In 2002, Booz Allen Hamilton conducted a study to examine the consequences of a terrorist attack on the supply chain. As a result of a hypothetical attack, it was projected that two major ports would close immediately, and that nine major U.S. ports would close in total. As a result, the ports would amass a projected three-month container backlog and an estimated \$58 billion dollar loss would register to the U.S. economy.¹⁷

The adequacy of the self-policing programs was questioned recently in a congressional hearing. In early December, Senator Mark Pryor (D-AR) asked DHS Secretary Napolitano the following question: "There's been some news reports recently that have been critical of the Border Patrols [C-TPAT] Program, and the gist of these news reports is that some Mexican gun and drug smugglers are actually using this program because it allows the trucks to get through the border quicker and I guess with less security. Are you aware of that? Are you aware of those news reports?" Secretary Napolitano replied that she was "not aware of those news reports."¹⁸

Despite questions about the C-TPAT and ISA self-policing programs, CBP seems even more willing to acquiesce to the demands of importers and other regulated companies. Two additional pilot programs—the Importer Self-Assessment Product Safety (ISA-PS)¹⁹ and the Broker Self-Assessment (BSA)²⁰ programs—have been established by CBP to provide importers and brokers with even more control over goods being imported into the U.S.

POGO has additional concerns about the ISA-PS pilot program to be run in conjunction with the Consumer Product Safety Commission (CPSC). It would allow select ISA importers to regulate their own product safety.²¹ Under the ISA-PS program a company will be able to determine its own imports' compliance with customs law and with federal product safety requirements.²² The degree of independence an importer would have if this pilot program becomes standard is unprecedented, making it nearly impossible (unless the public is harmed or a whistleblower comes forward) for CBP and the CPSC to learn about unsafe goods imported by ISA-PS companies, if those companies do not voluntarily disclose such information. With more control placed in the hands of importers, POGO is concerned about the government's ability to protect

¹⁷ Booz Allen Hamilton, Mark Gerencser, Jim Wienberg, and Don Vincent, *Port Security War Games: Implications for U.S. Supply Chains*, 2002, p. 3. <http://www.boozallen.com/media/file/128648.pdf> (Downloaded December 10, 2009)

¹⁸ Testimony of Department of Homeland Security Secretary Janet Napolitano before the Senate Commerce, Science, and Transportation Committee, *Transportation Security Challenges Post-9/11*, December 2, 2009. (Hereinafter Napolitano Testimony).

http://www.dhs.gov/ynews/testimony/testimony_1259938923345.shtm (Downloaded December 10, 2009)

¹⁹ Federal Register, "Department of Homeland Security: U.S. Customs and Border Protection: Importer Self-Assessment Product Safety Pilot," Vol. 73, No. 210, October 29, 2008, p. 64356. (Hereinafter ISA-PS Fed. Reg.). <http://edocket.access.gpo.gov/2008/pdf/E8-25551.pdf> (Downloaded December 10, 2009)

²⁰ Federal Register, "Department of Homeland Security: U.S. Customs and Border Protection: Broker Self-Assessment Outreach Pilot," Vol. 74, No. 79, April 27, 2009, p. 19103. (Hereinafter BSA Pilot Fed. Reg.). <http://edocket.access.gpo.gov/2009/pdf/E9-9551.pdf> (Downloaded December 10, 2009)

²¹ ISA-PS Fed. Reg., 64356.

²² U.S. Customs and Border Protection, *CBP/CPSC to Partner with Importers on Product Safety Pilot*, October 29, 2008.

www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2008_news_releases/oct_2008/10292008.xml (Downloaded December 10, 2009)

the public from harmful or deadly products, for example, as noted by Senator Bill Nelson (D-FL), defective drywall.²³ Post-import inquiries regarding defective drywall²⁴ and lead paint toy recalls²⁵ show that dangerous goods are already getting into the country. CBP and CPSC might want to shift their focus to preventing harmful or deadly products from reaching the consumer marketplace. Just a quick review by POGO found that since 2005 there have been approximately 80 CPSC press releases about lead paint toy recalls involving U.S. importers and manufacturers in foreign countries.²⁶ Unfortunately, POGO isn't able to determine how many of those companies participate in CBP's ISA-PS program.

In April 2009, CBP started the BSA pilot program.²⁷ Under that program, CBP will essentially allow participating customs brokers (companies in business to assist in the import and export of goods)²⁸ to self-regulate in an effort to ensure a high level of broker compliance with CBP laws and regulations.²⁹ Another intended result is to "facilitate legitimate trade so that CBP can focus on higher-risk trade enforcement issues."³⁰ Although a worthy cause, this program appears to be another example of providing accommodations to the import industry.

POGO is also concerned that, according to statements by Acting CBP Commissioner Jayson Ahern as recently as April 1, 2009,³¹ CBP is even moving towards "mutual recognition" agreements with other nations that would recognize and reward the stated security efforts of foreign traders that aren't C-TPAT members. This program would further lessen the government's knowledge and control of goods coming into the U.S.

It is easy to conclude that all of these programs are, in part, the result of limited resources to monitor the hundreds of billions of dollars of goods that enter the U.S. each year. However, the risk inherent with that strategy becomes a financial, security, and safety issue. For more

²³ Senator Bill Nelson letter to President Obama, April 7, 2009, p. 1.

<http://billnelson.senate.gov/supporting/mediareleases/nord.pdf> (Downloaded December 10, 2009)

²⁴ U.S. Consumer Product Safety Commission, *Press Statement on Corrosion in Homes and Connections to Chinese Drywall*, November 23, 2009, p. 1.

<http://www.cpsc.gov/info/drywall/Nov2009statement.pdf> (Downloaded December 10, 2009)

²⁵ U.S. Consumer Product Safety Commission, *American Greetings Corp. Recalls Sport Balls Due to Violation of Lead Paint Standard*, Release # 09-267, July 9, 2009.

<http://www.cpsc.gov/cpscpub/prerel/prhtml09/09267.html> (Downloaded December 10, 2009);

See also U.S. Product Safety Commission, *Recalls and Product Safety News*, no date provided.

<http://www.cpsc.gov/cpscpub/prerel/prerel.html> (Downloaded December 10, 2009)

²⁶ U.S. Consumer Product Safety Commission, *Toy Hazard Recalls*, no date provided.

<http://www.cpsc.gov/cpscpub/prerel/category/toy.html> (Downloaded December 10, 2009)

²⁷ BSA Pilot Fed. Reg., p. 19103.

²⁸ U.S. Customs and Border Protection, *Becoming a Customs Broker*, no date provided.

http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/brokers.xml (Downloaded December 10, 2009)

²⁹ U.S. Customs and Border Protection, *CBP Selects Broker Self-Assessment Pilot Participants*, July 29, 2009, p. 1. (Hereinafter *BSA Participants*).

http://www.cbp.gov/xp/cgov/newsroom/news_releases/july_2009/07292009_2.xml (Downloaded December 10, 2009)

³⁰ BSA Pilot Fed. Reg., p. 19103.

³¹ Statement of Jayson P. Ahern, Acting Commissioner, U.S. Customs and Border Protection Before the Committee on Appropriations, Subcommittee on Homeland Security, April 1, 2009.

http://www.customs.gov/xp/cgov/newsroom/congressional_test/strong_security.xml (Downloaded December 10, 2009)

information on C-TPAT, ISA, ISA-PS, and BSA, please see the attached *Overview of Customs and Border Protection's Self-Policing Import Programs*.

Access to Information

POGO attempted to examine the C-TPAT and ISA programs by requesting records pursuant to the Freedom of Information Act, requesting company names, audits, and records of compliance.³² DHS denied both the request and administrative appeal citing, among other exemptions, national security risks. POGO's appeal, however, focused on information pertaining to both programs that was publicly available, including the names of many C-TPAT and ISA members.³³ CBP responded stating: "Even though CBP inadvertently released some names of the companies that are members of the Importer-Self Assessment Program (ISA)... in the printed edition of CBP Today... any references to the ISA member companies were subsequently removed from the electronic version of the CBP newsletter. Accordingly, CBP considers the information to remain protected and exempt from disclosure."

Despite that claim, POGO has identified additional companies involved in both the C-TPAT and ISA programs, using simple searches of federal and company websites, including the American Petroleum Institute, BP America, Broadcom Corp., Cost Plus, Daimler, Delphi, Estee Lauder Co., Euromarket, FedEx, Ford, General Motors, Hasbro, Samuel Shapiro & Company, Inc., Sara Lee, Target Corporation, Tektronix, Tiffany, and VisteonMotorola.³⁴ CBP also provided testimonials from a number of companies, including Pfizer Global Manufacturing, Canadian National Railway, Trust International Corp, PepsiCo International, Confab Laboratories, AO Smith Corp., and Wet Seal/Arden B, in an attempt to increase its membership.³⁵ CBP also provided the University of Virginia with the names of more than 1,700 C-TPAT companies in order to assess their satisfaction with the program,³⁶ further demonstrating CBP's lack of control over membership information. If the names of program participants are indeed non-public

³² POGO submitted a FOIA request to U.S. Customs and Border Protection on January 24, 2004. We received a denial almost two years later on January 12, 2006. POGO filed a prompt appeal on January 24, 2006, citing public disclosure of some of the information that POGO requested. DHS responded on October 24, 2008, providing a final denial of POGO's request.

³³ *CBP Today*, p. 1.

³⁴ Remarks of U.S. Customs and Border Protection Commissioner Robert C. Bonner, *C-TPAT Announcement*, Detroit, Michigan, April 16, 2002.

http://www.cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/archives/2002/apr162002.xml

(Downloaded December 10, 2009)

U.S. Customs and Border Protection, *Importer Transitions from Focused Assessment to the Voluntary Importer Self-Assessment Program*, March 23, 2005.

http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2005_press_releases/032005/03232005.xml

(Downloaded December 10, 2009); Other listings were found on company websites:

http://fedex.com/ca_english/international/customsservices/fastprogram.html (Downloaded December 10, 2009),

<http://www.broadcom.com/company/c-tpat.php> (Downloaded December 10, 2009),

<http://fedex.com/us/customersupport/ftn/faq/isa.html> (Downloaded December 10, 2009),

<http://www.shapiro.com/html/ctpat.html> (Downloaded December 10, 2009)

³⁵ U.S. Customs and Border Protection, *C-TPAT: A Guide To Program Benefits*, no date provided, p. 4. (Hereinafter *C-TPAT Guide*).

http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_benefits.ctt/ctpat_benefits.pdf (Downloaded December 10, 2009)

³⁶ *C-TPAT Guide*, p. 3.

information, someone should inform CBP officials and participants.

From significant problems with validating the security policies of C-TPAT membership companies and the trade compliance practices of ISA applicants to inconsistency and confusion about membership secrecy, CBP has demonstrated a number of significant and worrisome weaknesses in creating and implementing these self-policing programs. The vast potential for abuse, security, compliance and safety breaches, and revenue losses caused by the C-TPAT, ISA, ISA-PS, and BSA programs demands greater accountability and openness on the part of the government.

Recommendations

We strongly recommend that Congress investigate the C-TPAT, ISA, ISA-PS, and BSA self-policing security, compliance, and safety programs. Close scrutiny should be paid to all audit reports submitted both before and after the company's entrance into those programs.

Congress should also consider restructuring the programs and adding some security and compliance safeguards—including periodic routine audits to ensure that compliance and safety laws are being followed, appropriate import revenues are being collected, and supply chains are not being jeopardized. Additionally, performing periodic audits of randomly selected C-TPAT and ISA importers would create a deterrent for those not complying with laws, regulations, and program requirements. There should also be clear criteria for revoking membership in C-TPAT and ISA if results from these audits and other reviews are not satisfactory. These steps should be taken after first examining CBP auditing procedures to ensure they are effective and that they emphasize protection of revenue and the public.

Reforms that should also be considered by Congress and U.S. Customs & Border Protection are to:

- Enforce all current laws, regulations, and policies. Currently, the true security of the international supply chain is unknown—we have a large number of rules in place, yet these rules are not being enforced.
- Freeze the membership levels of C-TPAT and ISA immediately. The number of participants is now in the thousands and the programs are expanding much too quickly for the agency to accurately and reliably assess the security and compliance profiles of program applicants and current member companies.
- Improve the reliability of CBP's validation processes (especially in terms of the accuracy of its admissibility reviews) by ensuring that its reviews comply with audit standards and by bringing in highly qualified third-party auditors, or both. Companies should not be admitted to C-TPAT, ISA, or any other self-policing program until they are audited and found to be fully compliant with all security, compliance, and safety laws and regulations.
- Expand the audit process (once CBP has enhanced the quality of its individual reviews) to include a larger number of companies at all tier levels, so the agency can both sample a

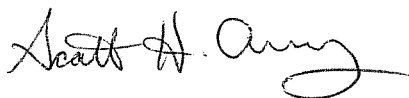
much larger number of companies and assess firsthand whether or not granting more benefits actually results in improved security and trade compliance.

- Promote a specific mindset regarding CBP's tiered system: the more benefits a company receives, the more stringent its security and compliance requirements (and, more importantly, its security and compliance validations) must be. The benefits given to companies should be a reward for proven and verified security and compliance improvements, not advantages given simply based on promises that these companies will comply with all laws and regulations. Verified compliance should come first, and benefits should come second.
- Conduct oversight of the ISA-PS and BSA pilots prior to their graduation to permanent programs. Congress and CBP should have more information about their respective benefits and risks prior to their expansion, or the initiation of other pilot programs.
- Determine whether membership information is protected information, provide ample reasoning for that decision, and then apply this decision consistently in all cases. As the situation currently stands, CBP claims that membership information is protected from public disclosure, yet participant information is on numerous public websites.

The potential for abuse of those programs, both by would-be terrorists and by the importers themselves, is too great to ignore. Additionally, taxpayers need assurances that imported goods, revenue, and public safety are not at risk—assurances that CBP cannot currently provide.

Thank you for your time and consideration. If you have any questions or need any further information, please contact me by phone at (202) 347-1122 or by email at scott@pogo.org.

Sincerely,



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Overview of Customs and Border Protection's Self-Policing Import Programs

1. Customs-Trade Partnership Against Terrorism (C-TPAT) Program

The Customs-Trade Partnership Against Terrorism (C-TPAT) program was formed in direct response to 9/11, and the announcement of its creation was made two months after the attacks.¹ C-TPAT is a voluntary partnership between the government and the private sector created as part of Customs and Border Protection's (CBP) effort to increase the security of imports.² C-TPAT participants are certified by CBP to monitor their own supply chain security, and in exchange they receive a number of benefits from CBP, including expedited processing of imported containers.

For a number of years, C-TPAT essentially existed solely as a policy of CBP, with limited congressional input. In 2006, however, Congress weighed in by passing the SAFE Port Act, officially establishing C-TPAT "to strengthen and improve the overall security of the international supply chain and United States border security."³

To gain acceptance to C-TPAT, a company must complete a five step process:

1. Application – A company submits the required information via an online form and signs an agreement to participate in C-TPAT.
2. Security Profile – Within 60 days of the initial application, the company must evaluate its security measures at specified points throughout the supply chain.

¹ U.S. Customs and Border Protection, "Commissioner Robert C. Bonner: Trade Symposium 2001 Opening Address," November 27, 2001.

http://cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/archives/2001/nov272001.xml (Downloaded December 8, 2009)

² Non-C-TPAT importers suffer border disruptions due to increased examinations and slower processing periods to get cargo released by CBP. See U.S. Customs and Border Protection, *C-TPAT: A Guide To Program Benefits*, no date provided.

http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_benefits.ctt/ctpat_benefits.pdf (Downloaded December 9, 2009)

³ U.S. House of Representatives, 109th Congress, "H.R. 4954: To improve maritime cargo security through enhanced layered defenses, and for other purposes" (Report No. 109-447), March 14, 2006.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h4954rh.txt.pdf (Downloaded December 8, 2009)

3. Certification – A review is conducted by a government employee who is a Supply Chain Security Specialist (SCSS) to assess the applicant’s compliance with CBP’s minimum security standards for that trade sector.
4. Vetting – While evaluating the security profile, the SCSS also analyzes the company’s history of compliance and violation of customs law. The SCSS is to identify any questionable findings that may bar an applicant from being trusted with the self-regulation implicit in the C-TPAT program. If an importer has a favorable review under both the certification and vetting processes, benefits to the importer can begin.
5. Validation – A review, again conducted by an SCSS, is conducted one year after a company is approved for C-TPAT. The SCSS meets with company representatives to determine the extent to which the security profile is accurate and reliable. Importers who exceed the minimum requirements are approved for extra C-TPAT benefits corresponding with their level of security.⁴

Once these materials are submitted, the importer begins its climb up the C-TPAT tiered benefits system. The first tier allows for a reduction of an importer’s Automated Targeting System score.⁵ The second tier is reached when CBP validates the company’s security measures, and allows access to benefits that may include priority cargo searches and a reduction in cargo examinations. At the third tier, associated with the highest level of compliance, importers can expect expedited release of cargo regardless of the DHS threat level, a further reduction in cargo examinations, and priority when they are selected for cargo examinations.⁶

This year, the Senate proposed the “Customs Facilitation and Trade Enforcement Reauthorization Act of 2009,”⁷ which would allow for the development and implementation “additional trade benefits” for Tier 1, 2, and 3 C-TPAT participants.⁸

2. Importer Self Assessment (ISA) Program

Another perk of C-TPAT tier-three status is Importer Self Assessment (ISA) program eligibility.

⁴ Government Accountability Office, *Testimony Before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate – Homeland Security: Key Cargo Security Programs Can be Improved* (GAO-05-466T), May 26, 2005, pp. 3, 6-8.

<http://www.gao.gov/new.items/d05466t.pdf> (Downloaded December 8, 2009)

⁵ The Automated Targeting System (ATS) is “a CBP data system that obtains, provides, and analyzes sources of information in order to track import shipments that may pose a risk to the United States. The ATS assigns a risk based point score to shipments as they enter or prepare to enter the United States.” Department of Agriculture, Food Safety and Inspection Service, *FSIS Directive: Targeting for High-Risk Imported Product Shipments*, September 10, 2008, p. 1. <http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/9030.1.pdf> (Downloaded December 8, 2009)

⁶ Government Accountability Office, *Supply Chain Security: U.S. Customs and Border Protection Has Enhanced Its Partnership with Import Trade Sectors, but Challenges Remain in Verifying Security Practices* (GAO-08-240), April 2008, p. 20. <http://www.gao.gov/new.items/d08240.pdf> (Downloaded December 8, 2009)

⁷ 111th Congress, S. 1631, Sec. 201, *Trade Benefits Under The Customs-Trade Partnership Against Terrorism*. (Hereinafter S. 1631).

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1631is.txt.pdf (Downloaded December 9, 2008)

⁸ S. 1631, Sec. 201(a).

The ISA program, announced on June 13, 2002,⁹ allows importers to evaluate their own compliance with federal trade laws. ISA was created by CBP using its regulatory audit authority, and has not been codified by Congress.

ISA was implemented as a way for “interested importers to assess their own compliance with Customs laws and regulations.”¹⁰ To become a member of ISA, an importer must be a member of the C-TPAT program, and submit an application, ISA questionnaire, and Memorandum of Understanding (MOU). The application includes basic company information and a statement certifying its C-TPAT standing. The questionnaire is two pages of “yes or no” questions followed by a page of short-answer questions.¹¹ The MOU is a signed document under which the importer agrees to oversee itself according to CBP policies, inform CBP if something is wrong, maintain records in case a review is initiated, and submit a yearly update confirming that the company continues to meet CBP security standards.¹²

Those documents are submitted to CBP for review. In some cases, the agency may send liaisons to consult with the company on its application. CBP stresses that this process “will not be an audit and will not involve extensive testing.”¹³ Should CBP determine that the applicant is not ready to properly assess itself and make changes to its compliance program, CBP will work with the company to make the necessary improvements. If the company passes CBP’s review, the agency will sign the MOU and the benefits begin immediately.

ISA members get even more leeway than C-TPAT members. As an ISA participant, an importer will be exempt from certain comprehensive compliance audits,¹⁴ performed by CBP, but they may be subject to more limited-scope audits, such as Quick Response Audits.¹⁵ CBP points out,

⁹ Department of the Treasury, United States Customs Service, *Importer Self-Assessment Program* (4820-02-P), June 13, 2002. (Hereinafter *ISA Program*).

http://cbp.gov/linkhandler/cgov/trade/trade_programs/importer_self_assessment/isanotice.ctt/isanotice.pdf (Downloaded December 8, 2009)

¹⁰ *ISA Program*, p. 1. ISA is the successor to the Importer Compliance Monitoring Program, initiated in 1998.

¹¹ U.S. Customs and Border Protection, Office of Strategic Trade, *Importer Self-Assessment Questionnaire*. www.cbp.gov/linkhandler/cgov/trade/trade_programs/importer_self_assessment/questionnaire.ctt/Questionnaire.doc (Downloaded December 9, 2009)

¹² *ISA Program*, p. 4.

¹³ *ISA Program*, p. 5.

¹⁴ U.S. Customs and Border Protection, Office of Strategic Trade, *Importer Self-Assessment Handbook*, September 2005, p. 2 (Sect. 2.3 Benefits).

http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/importer_self_assessment/isahb.ctt/isahb.doc (Downloaded December 8, 2009)

The ISA Handbook states that ISA benefits include the import’s removal “from the Regulatory Audit Division’s (RAD) audit pool established for Focused Assessments. (Importers will be removed from the RAD’s audit pool for Drawback and Foreign Trade Zones if they request to have these programs included in the ISA Program.) The audit exemption will apply to each specific area when it is determined that adequate internal controls are in place. (Importers may be subject to on-site examinations for single-issue reviews.)” A focused assessment (FA) is described by CBP as a “risk based approach to audit[ing].” A focused assessment examines a company’s internal controls and only examines areas deemed to be “at risk.” See: U.S. Customs and Border Protection, Office of Strategic Trade, Regulatory Audit Division, *Focused Assessment: a Risk Based Approach to Audit*, 2001. http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/audits/focused_assessment/fap_overview.ctt/fap031802.pdf (Downloaded December 8, 2009)

¹⁵ “Quick Response Audits (QRAs) are single-issue audits with a narrow focus. These audits are designed to address a specific objective within a short period of time. QRA is a term used to cover a variety of audits that will have limited objectives as opposed to the complete evaluation of a company’s Customs and Border Protection (CBP)

however, that “it is unlikely that an ISA approved company, with established internal controls, would be the subject of a referral audit.”¹⁶

3. Importer Self-Assessment Product Safety (ISA-PS) Pilot

In late 2008,¹⁷ again acting without congressional oversight, CBP in conjunction with the Consumer Product Safety Commission (CPSC) started the Importer Self-Assessment Product Safety (ISA-PS) pilot program. The pilot program was conceived by an “Interagency Working Group on Import Safety” charged with “identify[ing] actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products.”¹⁸ An ISA company applying for this pilot will be evaluated simultaneously by the CBP and CPSC against a list of “best practices to ensure compliance with CPSC’s current regulations.”¹⁹ If CBP and CPSC agree that an importer is credible, the company will be trusted to “ensure product safety at all points in the product life-cycle”²⁰ of their imports.²¹

Requirements include being an active ISA member, completing a questionnaire and addendum to the ISA MOU, agreeing to “comply with all laws and regulations administered by CBP, as well as CPSC,” maintaining internal controls, and submitting an annual notification to CBP that “acknowledges that the importer continues to meet the requirements of the ISA-PS pilot program.”²²

4. Broker Self-Assessment (BSA) Pilot

In April 2009, CBP started the Broker Self-Assessment (BSA) pilot program.²³ “Under the BSA program pilot, participating customs brokers will update and improve internal controls, perform periodic testing of these internal controls, and disclose to CBP deficiencies discovered through the testing. The primary goal of the pilot is to ensure a high level of broker compliance with CBP

activities in the focused assessment program.” U.S. Customs and Border Protection, “Quick Response Audits,” May 17, 2006.

http://www.cbp.gov/xp/cgov/trade/trade_programs/audits/quick_response.xml (Downloaded December 8, 2009)

¹⁶ U.S. Customs and Border Protection, *Importer Self-Assessment: Frequently Asked Questions*, June 2006.

http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/importer_self_assessment/isafaq.ctt/isafaq.pdf (Downloaded December 9, 2009)

¹⁷ Federal Register, “Department of Homeland Security: U.S. Customs and Border Protection: Importer Self-Assessment Product Safety Pilot,” Vol. 73, No. 210, October 29, 2008. p. 64356. (Hereinafter ISA-PS Fed. Reg.). <http://edocket.access.gpo.gov/2008/pdf/E8-25551.pdf> (Downloaded December 8, 2009)

¹⁸ The Working Group was created on July 18, 2007 by President George W. Bush in Executive Order 13439. See: ISA-PS Fed. Reg. p. 64356.

¹⁹ ISA-PS Fed. Reg. p. 64356.

²⁰ ISA-PS Fed. Reg. p. 64356.

²¹ U.S. Customs and Border Protection, “CBP, CPSC to Partner with Importers on Product Safety Pilot,” October 29, 2008.

http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2008_news_releases/oct_2008/10292008.xml (Downloaded December 8, 2009)

²² U.S. Customs and Border Protection, *Office of International Trade Importer Self-Assessment-Product Safety Pilot Program Addendum*, October 2008.

http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/is_initiatives/isa_pilot/isa_comprehensive.ctt/isa_comprehensive.pdf (Downloaded December 9, 2009)

²³ Federal Register, “Department of Homeland Security: U.S. Customs and Border Protection: Broker Self-Assessment Outreach Pilot,” Vol. 74, No. 79, April 27, 2009. p. 19103. (Hereinafter *BSA Pilot*).

<http://edocket.access.gpo.gov/2009/pdf/E9-9551.pdf> (Downloaded December 8, 2009)

laws and regulations.”²⁴ According to CBP, “[c]ustoms brokers are private individuals, partnerships, associations or corporations licensed, regulated and empowered by [CBP] to assist importers and exporters in meeting Federal requirements governing imports and exports.”²⁵

Similar to the other self-policing programs, BSA members must be C-TPAT members, complete a questionnaire, “agree to comply with all applicable CBP laws and regulations,”²⁶ and conform to a few other requirements. Applications were reviewed by CBP, and in July 2009, four brokers were selected to participate in the year-long pilot.²⁷

²⁴ U.S. Customs and Border Protection, “CBP Selects Broker Self-Assessment Pilot Participants,” July 29, 2009, p. 1. (Hereinafter *BSA Participants*).
http://www.cbp.gov/xp/cgov/newsroom/news_releases/july_2009/07292009_2.xml (Downloaded December 8, 2009)

²⁵ U.S. Customs and Border Protection, “Becoming a Customs Broker.”
http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/brokers.xml (Downloaded December 8, 2009)

²⁶ *BSA Pilot*, p. 19103.

²⁷ *BSA Participants*, p. 1.