

# ACI's 3<sup>rd</sup> U.S. Customs Compliance Boot Camp

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## C-TPAT and ISA: The Ins and Outs of CBP's Trusted Trader Program

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**by**

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# Trusted Trader: ISA CTPAT Combo Meal?

- Understanding the Trusted Trade Program
  - Evolution of CTPAT, ISA to TT
  - Building on CTPAT and ISA to become TT
  - CTPAT, ISA and TT: Worth it?



# Trusted Trader: ISA CTPAT Combo Meal?

- Understanding the Trusted Trade Program
  - To understand the Trusted Trade Program, you need to understand the purposes and methods behind CTPAT and ISA



# CTPAT – The History

- Post 9/11 Legislative vs administrative action
  - Open Every Container vs
  - Partnership with Trade
- Voluntary vs “voluntary”
- Successful or not?
- Remaining consequences of not volunteering



# CTPAT – The Details

- Voluntary effort to secure your supply chain
- If you volunteer, 5 step process to address security concerns



# Best Practices for Following CBP's Five-Step Risk Assessment Model

- While C-TPAT participants are not required to use CBP's Five-Step Risk Assessment Model, participants are required to have a documented process for addressing security risks.



# Best Practices for Following CBP's Five-Step Risk Assessment Model

The Five-Step Model consists of the following:

## 1. Mapping Cargo and Business Partners

- Profile your suppliers and diagram your supply chain, identifying the movement of cargo and including each mode of transportation



# Best Practices for Following CBP's Five-Step Risk Assessment Model

The Five-Step Model consists of the following:

## 2. Conducting a Threat Assessment

- Focus on security threats relating to terrorism, contraband smuggling, human smuggling, organized crime or conditions that foster these threats
- Establish or rate the risk levels associated with each as high, medium or low





# Best Practices for Following CBP's Five-Step Risk Assessment Model

The Five-Step Model consists of the following:

## 3. Conducting a Security Vulnerability Assessment

- Using the C-TPAT Minimum Security Criteria, rate the vulnerability of supply chains in high risk areas as high, medium or low, for each Minimum Security Criterion



# Best Practices for Following CBP's Five-Step Risk Assessment Model

The Five-Step Model consists of the following:

4. Preparing an Action Plan to Address Vulnerabilities
  - For each vulnerability in the supply chain process that that is identified, an Action Plan should be developed, describing the corrective action or mitigation strategy to be implemented.
  - The Action Plan should also identify responsibility for the corrective action, the deadline for corrective action and progress review dates, evidence of corrective action.
  - Corrective action should be verified and the outcome of the corrective action should be documented.



# Best Practices for Following CBP's Five-Step Risk Assessment Model

The Five-Step Model consists of the following:

5. Documenting How the Security Risk Assessment is Conducted
  - C-TPAT partners should have written policies and procedures which require each step in the risk assessment process to be fully documented (as discussed later).



# Best Practices for Following CBP's Five-Step Risk Assessment Model

- Best practices for risk assessment include the following:
  - Exceeding the minimum security criteria
  - Incorporating risk assessments into the business process
  - Integrating people, processes and technology into risk assessment
  - Incorporating checks, balances and accountability into risk assessment
  - Testing, auditing, reporting and follow-up on results of risk assessments



# When and How Often to Conduct Supply Chain Security Assessments

- CBP requires C-TPAT partners to conduct annual self-assessments, which include but are not limited to reviewing and updating the company and security profiles.
- In accordance with the company's policy and procedure for reviewing and updating risk assessments, the development of new supply chains, and changed circumstances in existing supply chains, risk assessment may be necessary more frequently.



# Documenting Information

- The effective date and revision dates to the Risk Assessment Process
- Responsibilities for maintaining and updating the Risk Assessment Process
- Policy for determining the frequency of risk assessments, including circumstances which trigger risk assessments
- Policy for reviewing and updating risk assessment procedures
- Procedure for conducting threat assessments and vulnerability assessments
- Procedure for following up on action required by revalidations
- Training process for revalidation participants
- Policy and procedures for ensuring upper management accountability for the revalidation process



# Who Conducts Foreign Revalidations, the Process, Timeframe and How to Handle It

- Validation, revalidation, rerevalidation
- Continual vigilance in your supply chain
- Continual vigilance by CBP



# Who Conducts Foreign Revalidations, the Process, Timeframe and How to Handle It

## The Foreign Revalidation Process

- The Foreign Validation Process depends on cooperation between CBP and the C-TPAT participant and its foreign suppliers and service providers.
  - Security Profile Review - C-TPAT Guidelines and Security Criteria
  - Conduct Pre-Validation Risk Assessment





# Who Conducts Foreign Revalidations, the Process, Timeframe and How to Handle It

- Foreign Revalidations are conducted by Supply Chain Security Specialists (“SPSSs”), who are employees of U.S. Customs and Border Protection and work from C-TPAT field offices throughout the U.S.



# Who Conducts Foreign Revalidations, the Process, Timeframe and How to Handle It

## The Foreign Revalidation Process

- Conduct domestic and/or foreign site visit
- Facility Visits: distribution centers, customers or service providers
- Verify security policies and procedures against Minimum Security Criteria
- Verify evidence of implementation which includes document reviews and observations



# Who Conducts Foreign Revalidations, the Process, Timeframe and How to Handle It

## The Foreign Revalidation Process

- Jointly identify gaps, vulnerabilities, and weaknesses
- Close-out meeting
- Provide Recommendations
- Specify Actions Required
- Prepare revalidation report - supervisory review/approval



# Who Conducts Foreign Revalidations, the Process, Timeframe and How to Handle It

## The Foreign Revalidation Process

- Revalidation Report sent to partner via Portal
- Partners have 90 days to respond to the report via Portal
- Appeal Suspension if necessary
- Self Policing /continued relationship with CBP



# Preparing for Foreign Revalidations, and What to Expect – Is the Scope of the Review Determined in Advance?

- What to Do Before the CBP Visit
- Review the Supply Chain Security Profile with the local management team.
- Determine whether the Security Profile or any related processes have changed
- Identify any security practices which have been implemented since the last validation visit
- Identify any discrepancies between company policy and actual practices, and investigate and resolve these issues prior to the CBP visit



# Preparing for Foreign Revalidations, and What to Expect – Is the Scope of the Review Determined in Advance?

Have a documented Action Plan for the Revalidation and include the following:

- Issues to be addressed prior to the visit
  - The revalidation visit
  - Post revalidation activities
  - Responsible persons, due dates, action items



# Handling CTPAT Problems

- Continuing company commitment?
- Does this commitment carry through to action
- Losing CTPAT
  - Failed validation
  - Quitting CTPAT and the consequences of doing so
  - Saving CTPAT



# Importer Self Assessments

- Background to Focused Assessments and Importer Self Assessments
  - Customs audit function before 1993
  - The Customs Modernization Act
    - Shifted Responsibility
    - Reasonable Care
    - Informed Compliance
    - Enforced Compliance
  - Modern Audits
    - Remember CATS, CAT Kits, (NOT Kit Kats)
    - Focused Assessments
    - Importer Self Assessments





# Focused Assessments

- Not voluntary
- Improved audits over the evolution of Regulatory Audit
  - More focus on larger picture of importer compliance
  - Not “Find the error and penalize audits”
  - NOW: “Review Procedures, understand the errors”.



# Focused Assessments and Importer Self Assessments

- What's the difference?
  - Voluntary vs involuntary.
  - Audit is similar but different
  - Purpose is different
  - Tone and emphasis is different



# Focused Assessments and Importer Self Assessments

- The relationship between FA and ISA
  - Successful FA can help with ISA if you follow up within one year
  - Failed FA, no ISA
  - IF ISA Certified, No FA (But still “quick response” audits and others.....)



# Importer Self Assessments

- Why have Importer Self Assessments
  - Economics of enforcement
  - Congressional oversight
  - Better focus on “the real bad guys”
- How can you use ISA to your advantage?
- Can ISA work to your disadvantage?
- Do I have to participate in ISA?
- If I don't participate in ISA, what will happen?



# Importer Self Assessments

- Importer Self Assessments
  - Goals of ISA
    - Voluntary partnership to maintain trade compliance
  - Benefits of ISA Participation
    - Exit the audit pool
    - Customs compliance assistance
      - Access to OST officials
      - Information from Customs to help with internal compliance efforts



# Importer Self Assessments

- Importer Self Assessments
  - ISA Procedures (ISA Tab 1.4)
    - Join CTPAT
    - ISA questionnaire (ISA Appendix D)
    - ISA MOU (ISA Appendix C)
    - Application review
      - 90 Days
      - On-site consultation
      - Entry Summary Trade Data Request
    - ISA Revocation (ISA TAB 5)



# Importer Self Assessments

- FA Audit Issues AND ISA Internal Control Evaluation Issues (Appendix F)
  - Control Environment
  - Risk Assessment
  - Control Activities
  - Information and Communication
  - Internal Monitoring
  - Compliance Analysis and Assessment by Issue



# Importer Self Assessments

- Control Environment (ISA)
  - Goals (ISA Appendix B.5.a)
    - Sets the compliance tone of organization
    - Foundation for other controls
    - Positive and supportive attitude toward Customs compliance





# Importer Self Assessments

- Control Environment (ISA)
  - Establish and maintain compliance atmosphere
    - Systemic and organizational support
      - Competent personnel
      - Education and training
      - Sufficient organizational structure
  - Message of integrity and values
  - Positive, supportive attitude for Customs internal controls
  - Conscientious management



# Importer Self Assessments

- Risk Assessment (ISA)
  - Goals
    - Identify risks to compliance
    - Analyzes effects
    - Design controls



# Importer Self Assessments

- Risk Assessment (ISA)
  - Identify risks
    - Risk management
    - Matching internal controls to manage risk of non-compliance



# Importer Self Assessments

- Control Activities (ISA)
  - Goal
    - Development of day-to-day compliance procedures



# Importer Self Assessments

- Control Activities (ISA)
  - Policies and Procedures
    - Ensure reporting
    - Ensure compliance with import requirements
      - Specific issue related compliance
  - Control activities
  - Measure proper application of control activities
  - Recordkeeping and documentation
  - Review of control procedures



# Importer Self Assessments

- Information and Communication (ISA)
  - Goals
    - Movement of compliance related information
      - Outside information
      - Internal, operational information



# Importer Self Assessments

- Information and Communication (ISA)
  - Establish and maintain processes to
    - Provide relevant, reliable information to those who need it
    - Provide complete and accurate information to Customs
  - Identify relevant information
  - External communication
  - Policy and procedures manuals



# Importer Self Assessments

- Internal Monitoring (ISA)
  - Goals Monitor oversight quality





# Importer Self Assessments

- Internal Monitoring (ISA)
  - Monitor activity to ensure performance quality
  - Ensure that issues and deficiencies are promptly resolved
    - Some compliance testing
    - Maintain testing records for 3 years
  - Evaluate results of monitoring activity



# Importer Self Assessments

**GOT ISA?**

**Now what?**



# Importer Self Assessments

- Internal compliance monitoring
  - Periodic testing
  - Disclosures
    - Prior Disclosure benefits and ISA
  - Annual Compliance Report
  - Signed Annual Compliance Report
    - Martha Stewart cell mate?



# CTPAT, ISA and now TT?

- GOT ISA and CTPAT?
- Want more?



# Trusted Trader Program

- The Trusted Trader Program is CBP's plan to unify the following programs:
  - C-TPAT
  - ISA



# Trusted Trader Program

- Current ISA / CTPAT participants will be automatically transitioned into new program unless they opt out (Source: CBP briefing)
- Can pick or choose between CTPAT, ISA or TT (Buffet option)



# Trusted Trader Program

- The Trusted Trader Program adds involvement of FDA and CPSC



# Trusted Trader Program

- Trusted Trader Program Goals:
  - Achieve integrated U.S. Government collaborations that result in enhanced efficiencies leading to a reduction in government-wide resource expenditures
  - Enhance information sharing between government agencies
  - Streamlining the application and validation process
  - Increase efficiencies in the existing trade programs.





# Trusted Trader Program

- The Trusted Trader Program and AEO



# Trusted Trader Program

- Authorized Economic Operator (AEO)
  - The Trusted Trader Program will align with AEO programs which focus on a combined trade and security compliance model implemented by other countries around the world.



# Trusted Trader Program

- Trusted Trader Program Application
  1. Questions concerning supply chain security (C-TPAT related questions)
  2. Questions concerning
    1. ISA Related Questions
      - Trade compliance process,
      - Trade compliance procedures, and
      - Internal controls
    2. ISA-PS related questions
      - Product Safety compliance



# Trusted Trader Program

- Trusted Trade Program Incentives Include:

- Incentives currently provided by C-TPAT and ISA
- Reduced FDA targeting/examination risk score
- Penalty offsets (upon request)
- The ability to flag and unflag entries for reconciliation retroactively. (If company participates in the Reconciliation Prototype)
- A reduction in the number of Foreign Trade Zone on-site inspections
- Drawback claimants will be exempt from on-site visits from Drawback Specialists.
- Exemption from Non-Intrusive Inspections.



# Trusted Trader Program

- Test Participant Roles and Responsibilities include:
  - Comply with applicable CBP laws and regulations (except those waived by program)
  - Submit a copy of customs policies and procedures
  - Annual self-testing
  - Documented system of internal controls to comply with CBP
  - Apprise Trade Compliance Branch of structural business changes
  - Submit annual notification letter and security profile review
  - Changes in import activity
  - Changes in internal control policies and procedures



# Trusted Trader Program

- Test Participant Roles and Responsibilities include:
  - Agree to comply with FDA and CPSC laws and regulations
  - Submit a Trade Compliance Questionnaire
  - Make records available for review
  - Make appropriate Prior Disclosures, PEAS and PSCs
  - Submit an Annual notification Letter (ANL)
    - Can submit with Annual Security Profile Review (ASPL)



# Trusted Trader Program

- Test Participant Eligibility Requirements Include:

- Active US importer meeting 19 CFR part 141, particularly 141.17 & 141.18
- Written policies pertaining to import
- Business office staffed in US or Canada
- Active IOR or CBP-assigned number
- Valid, continuous importation bond
- 2 years of import history before application to program
- Assess supply chain based on C-TPAT security criteria
- Meet C-TPAT supply chain security criteria
- C-TPAT supply chain security profile
- Establish compliance with CBP
- Maintain CBP compliance records



# Trusted Trader Program

- Grounds for suspension of Trusted Trader Status
  - Failure to follow terms and conditions
  - Failure to exercise reasonable care in security and trade compliance function
  - Failure to abide by applicable laws and regulations
  - Failure to deposit duties in a timely manner





# Trusted Trader Program

- Longevity of Trusted Trader Program
  - Meant to move toward broader incorporation
  - Recent accord between Mexico and US mutually recognizing each country's trusted trader program



# Trusted Trader Program

- Trusted Trade and You
  - Weigh benefits and costs
    - Costs beyond ISA?  
Costs beyond CTPAT?  
Costs if you don't have ISA or CTPAT  
Certification



# Trusted Trader Program

- Trusted Trade and You
  - The danger of “voluntary” programs
    - Abuse of or aid to regulatory process?  
Formal development of regulations vs rule by “voluntary” programs



# Trusted Trader Program

- Trusted Trader and You

The future of Trusted Trade, AEO at the World Customs Organization level.



# Trusted Trader Program

- Trusted Trader and You

The future of Trusted Trade, AEO at the World Customs Organization level.



# C-TPAT and ISA: The Ins and Outs of CBP's Trusted Trader Program

## **Further Questions:**

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