

THE GENESIS OF THE US C-TPAT PROGRAM: LESSONS LEARNED AND EARNED BY THE GOVERNMENT AND TRADE

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Abstract

The US Customs-Trade Partnership Against Terrorism (C-TPAT) program is nearly six years old and is hailed as the single most important and successful public and private partnership ever created in the US. The insightful lessons learned in designing, implementing and maintaining this critical supply chain security program are discussed.

Today, as the European Union moves to implement Authorised Economic Operator (AEO) programs, and other signatories to the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade, (the 'SAFE Framework of Standards' or 'SAFE Framework') develop regimes for their supply chain security programs, they might stop to consider some of the important points raised in this paper.

Prologue

I have often been accused of being overly enamoured of my friends at US Customs & Border Protection (CBP). The fact is, however, that I have a love/hate relationship with the US agency charged with collecting duties and securing trade. They are an agency of enigmas. One moment they can go out of their way to accommodate a 'hot' shipment or utilise common sense on a particularly complex issue and thus prove themselves adept at trade facilitation. At the same time, they also have a reputation for making processes unnecessarily complex and can be overly aggressive in their enforcement tactics. Truth be known, the professionals at CBP are my friends and I have worked with some of them my entire career. So, while I might be critical of them at times (call it tough love, perhaps), I have always made myself available if they ever needed my help.

On September 10, 2001, I had responsibility for the second largest retail import supply chain in the US market, moving more than 300,000 forty-foot containers annually from 84 countries. My employer at the time, a US 50 billion dollar Fortune 100 company, encouraged a culture of innovative collaboration to solve difficult problems. As part of my commitment to service, I was also honoured to hold a position on the Commercial Operations Advisory Committee (COAC), a 20-member advisory committee mandated by Congress and (at the time) appointed by the Secretary of the Treasury. I also was privileged and fortunate to have forged important relationships with a number of influential US trade associations, among them the American Exporters and Importers Association (AAEI), and the Business Alliance for Customs Modernization (BACM).

On September 11, 2001, the landscape of global trade changed forever. Shortly after the personal numbness of watching the looped video of planes hitting the World Trade Centers in New York wore off, I began to contemplate what these events meant for global supply chains and international trade in general. My heart went out to my friends at Customs who were suddenly working extraordinarily long shifts and struggling with serious operational issues at the borders. The US Customs Service had moved to the highest level of alert in their history: **Alert One**.

In the days immediately following 9/11, I reached out to the Assistant Commissioner of Field Operations at CBP, a bright, sensible, yet tough lady named Bonni Tischler (who would later pass away at an age much too early). In part, my e-mail to her stated, 'From my platform in private industry, as a COAC member, or as an ordinary citizen, if there is anything I can do to help, please do not hesitate to contact me'. Within twenty minutes of sending that e-mail, my phone rang.

And so began the project of building what is hailed in the US today as the single most successful private and public partnership ever created. There are important lessons to be learned on both sides from this experience. In this paper I will share and discuss some of those revelations.

Background

The legacy US Customs Service was founded in 1789 as one of the first acts of a newly formed US Congress. It is a proud and dedicated agency of the Federal Government, steeped in tradition. Tasked with the customary responsibilities of determining admissibility, protecting and collecting revenue, processing passenger and commercial traffic, detecting contraband and fraud, over the years the customs service grew with the globalisation of the world economy and given the US penchant for imports. Another contributor to growth within the customs service was the expanding influence and proliferation of the criminal element that were continually looking for ways to exploit the system to import contraband or otherwise evade the intricate laws governing trade to commit commercial fraud.

In the US, the Commissioner of Customs is a position appointed by, and serving at the pleasure of, the President. Of course each Commissioner brings a different perspective to the position and, over the years, the enforcement pendulum has swung both ways. In the late eighties and early nineties the US trade community had an adversarial relationship with the US Customs Service. It was also during this period, however, that Customs adopted a leadership position in forcing the trade to automate trade processes. In fact the *exact* words used by then Customs Commissioner William von Raab to the trade were, 'Automate or perish'. Customs, much to their credit, had been reviewing trends and trade data and could see that US trade was on the verge of a period of volatile growth. Customs was a visionary then, just as they are today in finding unique ways to protect and secure the US homeland. In my humble opinion they are the most forward-looking and critical-thinking department within the US Federal Government. Additionally, I would characterise the relationship that Customs has today with the trade community in the US as one of partnership and mutual respect. While there is still passionate and vocal disagreement at times and, as there should be, the lines of communication are open and Customs frequently engages the trade on a variety of issues.

The Power of Partnership

The catastrophic events of September 11, 2001 changed everything. It altered many perspectives and served to reinforce the necessity that Customs and the trade must work in partnership toward a new and common goal of securing the supply chain from terrorism. Shortly after 9/11, the US Customs Service as we knew it ceased to exist. They were given a new name, US Customs & Border Protection (CBP), and a complete new set of priorities and mission. No longer was protecting and collecting the revenue the number one mission of the service as it was when they were established. An expedient paradigm shift by CBP from compliance and enforcement to engaging the trade in a partnership was necessary. This was a radical departure and big leap of faith from their 'See a crook behind every lamppost' view of the world. CBP was required to inject some new words into their vocabulary, *trust, partnership and supply chain*.

CBP also had a new Commissioner, Robert Bonner, who was awaiting confirmation when 9/11 occurred. Under his immediate leadership, and directly managed by Bonni Tischler, Assistant Commissioner for Field Operations, CBP convened a group of fifty (50) renowned international trade experts representing every sector of the supply chain under the guise of the Commercial Operations Advisory Committee (COAC) to study supply chain security. This group of dedicated individuals met more than 25 times and

sat through hours of conference calls between October 2001 and April 16, 2002 when C-TPAT (Customs-Trade Partnership Against Terrorism) was inaugurated and launched. The ceremony was held on the Windsor Bridge in Detroit and was attended by executives from the seven charter members (Ford, GM, Chrysler, Sara Lee, BP, Target Corporation and Motorola) and Secretary of the Treasury Paul O'Neill, Director of Homeland Security Tom Ridge and CBP Commissioner Robert Bonner. This group was later dubbed 'The Magnificent Seven' by Commissioner Bonner.

CBP must be given a great deal of credit because they took the initiative while our Government was still struggling with the realities and general aftermath of 9/11. A power grab was also under way within the US Government as Congress created the Department of Homeland Security (DHS). This new department was established by merging twenty-two (22) other federal agencies, of which the US Customs Service was one. When they were merged into the new department, CBP was bifurcated and the enforcement branch, now known as Immigration and Customs Enforcement (ICE), was made a separate agency under DHS. According to well placed sources, this caused significant infighting and a number of jurisdictional issues. That, in turn, had a negative impact on morale within the service. It must not have been easy to keep focused while all of this political wrangling and manoeuvring was occurring within the young department.

But once again, much to their credit, CBP quickly realised two important things. The first was more of an awakening. CBP did not know how an international or multinational supply chain really worked. What data was available? Who are the stakeholders? What are the mechanics and touch points? Prior to 9/11, most CBP inspectors and personnel only knew that a consignment had presented itself at a port of entry into the US; and now their job in determining admissibility and collecting duties began. They knew very little about what had happened upstream with the consignment before the cargo arrived. CBP had a huge learning curve ahead and needed to rapidly acquire detailed knowledge about the intricacies and inner-workings of an international supply chain.

The second thing CBP realised is that most legitimate companies *want* to do the right thing. They are corporate citizens whose employees and customers live, work and play in the communities that they serve. They have a vested interest in keeping their businesses running and in keeping safe the community they operate in. CBP also realised that sometimes the private sector can do things much quicker and, in many cases, better and less expensively than the government. CBP recognised that when you force new rules or enact laws, companies will typically do the bare minimum to comply; on the other hand, when you engage companies in the spirit of partnership, the collaborative effort results in a more robust and versatile program.

So, armed with a recommendation from COAC that CBP build C-TPAT as a voluntary program, CBP crossed the first hurdle and declared that the C-TPAT program would in fact be strictly voluntary. The US Congress has from time-to-time challenged the voluntary nature of the program but CBP has stood steadfastly by their decision. The thinking was to separate those US importers who would pledge to use their own assets to protect the supply chain. It was a way to separate those companies who really wanted to do the right thing, from those who did not. Or perhaps a better way to put it is: separating the *known* from the *unknown*.

The benefits of building a true public and private partnership cannot be understated. Today, the CBP C-TPAT Program is lauded as the most successful public and private partnership ever created. Both sides, CBP and the trade, have put aside their differences on technical and compliance issues to address a common threat and concern: the scourge of terrorism.

C-TPAT Lessons Learned

Initially, the US C-TPAT program was partially victimised by its own success. Once word of the new program circulated through the trade and C-TPAT was being discussed at trade conferences, CBP was inundated with applications. The initial surge of applications caused several operational difficulties and long work queues hampered efforts to keep up. The US Congress and other agencies of the Federal

Government pressured CBP to ‘trust but verify’, so CBP began designing validations whereby they would visit C-TPAT applicants to ensure they had lived up to the commitments made in the C-TPAT profile/application. CBP was also criticised for initially granting benefits to applicants without reviewing the C-TPAT applicant’s security program.

As the program was rolled out, a new position was developed within CBP called the Supply Chain Security Specialist (SCSS). People appointed as these Specialists were charged with learning all about supply chains and would ultimately be tasked with conducting validations and re-validations of companies that join C-TPAT. Today, the validation process is clearly the Achilles heel of the C-TPAT program. Most SCSS validators have only enough knowledge and experience to complete a very cursory review of security protocols at a certain facility. In fact, the validation program has earned a reputation of being more of a ‘feel good exercise’ than a true validation and test of a company’s supply chain security program. Many validations take two hours or less, and are generally held in one of the more desirable travel destinations, rather than where the risk actually lies within a particular supply chain. Unfortunately, this reputation deprives customs compliance groups within companies the ability to leverage the compliance aspect of the program with their senior management. If C-TPAT is seen as a ‘paper tiger’, then companies will not devote the necessary resources for a successful supply chain security program suited to the risks of their particular operation. The potential result is the downfall of the partnership paradigm that has been established by CBP and its trade partners.

Furthermore, one must question the validity of how CBP prioritises companies to be validated. Most recently, CBP spent valuable resources validating an importer whose entire import volume moves by air courier from a manufacturer in the United Kingdom. Is such an importer really a security risk for unknowingly importing a military grade nuclear weapon?

The success or failure of any program depends upon the frequency and quality of communication, and in the early years of C-TPAT, CBP did a wonderful job of communicating their new program to the trade. Today, however, they would receive less than favourable marks for their internal communication to the CBP field staff in the 300+ ports of US entry. Two years into the C-TPAT program there were still significant numbers of CBP personnel in various ports who had little or no knowledge about C-TPAT and the impact it had on the importation of goods into the US.

From a benefit standpoint, CBP has not drawn a bright enough line of distinction between C-TPAT members and non-C-TPAT companies, or the *known* and the *unknown*. The original idea of making C-TPAT a voluntary program for purposes of separation has not worked as first envisioned. In short, the idea was that if a large number of importers into the US would agree to take responsibility for and use their own assets to secure the company’s supply chain, this should increase the confidence level in CBP, allowing them to reduce the number of inspections as a benefit for being in the program. And the natural consequence of reducing the number of physical inspections required for compliant C-TPAT importers is that it should free-up enough CBP resources to conduct a much higher level of examination on the non-C-TPAT importers, or the *unknown*. This does not appear to be the case and while the quantitative number of inspections has increased, non-C-TPAT members have largely been unaffected. This leaves little incentive for them to join the program. Today, if you are a non-C-TPAT importer into the US, it is my opinion that a company should be experiencing an extraordinarily high examination rate, perhaps 50% or more. This may sound a little callous, but if a consignment for a non-C-TPAT importer sits at a CBP examination site for several weeks while other C-TPAT members are moved to the head-of-the-line, so be it. In fact, there’s a good sound bite: call your Senator or Congressman and tell them you think CBP is being too tough on terrorism. The pain and supply chain delay caused by increased examinations and congested inspection stations might very well be the motivation that it takes for a non-C-TPAT importer to consider strengthening their supply chain security program.

Finally, while CBP seems totally transfixed on identifying and capturing data elements these days, they have completely taken their eye off the ball on intelligence; at least so far as the trade is concerned. This might be a big mistake and oversight. The trade has a wealth of intelligence that CBP could effectively mine and leverage into actionable intelligence. Such a model for intelligence sharing between the private and public sectors already

exists within the US Government; it is known as OSAC (the State Department's Overseas Security Advisory Council). The site acts as a fusion centre for intelligence contributed by the private sector. That information is reviewed, sanitised for public consumption and then broadcast to the other OSAC members. In the late 1990s, when Indonesia was engulfed in economic turmoil and riots were becoming an increasingly popular form of dissent, the power of intelligence in the right hands was again evident. While the US Government was able to provide high-level intelligence to vetted OSAC members in the region, those same OSAC members were able to provide on-the-street intelligence to the State Department. The result was a comprehensive view of a rapidly evolving situation. Years ago, when speaking to a high level CBP official, they stated that I would be 'completely underwhelmed' by the amount of intelligence CBP has at any moment in time. My reply was well, 'You might be completely *overwhelmed* by the amount of intelligence that the trade has'. CBP should make an effort to figure out how to develop a shared intelligence fusion centre and repository. Shared intelligence reports would be a big benefit for the trade and would strengthen the overall partnership.

C-TPAT Lessons Earned

For their part, when C-TPAT was formally launched on April 16, 2002, the trade responded with dynamism. Building a C-TPAT program from the ground up was both a revealing and rewarding experience. In our particular case, we thought that we knew our supply chain inside and out. In reality, however, when it was subjected to a comprehensive review and vulnerability assessment we learned many new things. In fact, one of the proverbial challenges related to creating a C-TPAT program offered by senior management was, 'How much is this going to cost?' In an expense driven business, the answer to this question is crucial. During our review of the supply chain in preparation for designing a C-TPAT program, we actually found things that allowed us to *save* money, versus increasing expense. This was welcome news to management and once our C-TPAT program had been successfully launched, we began capturing those savings. I would be remiss if I did not emphasise the importance of obtaining senior management buy-in before developing a supply chain security regime. Senior management approval and support are imperatives.

When first developing the blueprint for our C-TPAT program, we leveraged all available internal assets and other stakeholders within the supply chain: vendors, agents, carriers, consolidators and freight forwarders, customs brokers, and banks. Since we were a relatively large company, we had significant resources that we could dedicate to the effort. A governing corporate council including Internal Audit, Assets Protection, International Operations, Information Technology, Vendor Operations, Quality Assurance, Legal, International Transportation, Corporate Risk, Business Continuity, and Social Compliance was established. In our case it was nice to have all of those resources at our disposal given the depth and breadth of the supply chain we were attempting to secure. Smaller and less complex supply chains do not require the same amount of resources and are often well served by consultants who can assist and provide specific expertise that may not be available internally.

The initial supply chain analysis was completed by Internal Audit, International Operations and International Transportation. As a parallel effort, Assets Protection completed a risk and vulnerability assessment. It was this analysis that allowed us to develop our risk model and helped us focus our resources based upon countries and suppliers with the highest levels of risk.

One of the first big challenges that we faced was data. We recognised that it would be necessary to survey each of the more than 15,000 vendors and foreign suppliers we had operating in 84 countries. This became a significant obstacle and we had to rely on our Information Technology department to design such a system. Today, fully functional 'off the shelf' software is now available as well.

The next challenge was 'boots on the ground'. For this task we recruited Quality Assurance (QA) who had a small army of inspectors visiting producing factories on a daily basis. With comprehensive cross-training on factory security and armed with lengthy questionnaires, QA inspectors would visit facilities on a daily basis recording information and comparing it to the electronic report previously submitted by the vendor.

International Network of Customs Universities

From the risk assessment, we also learned that the most vulnerable point in our supply chain was the dray between the origin factory and the terminal. To tighten up this process, we changed our terms of sale to FCA (Free Carrier). This allowed us to control the inland transportation at origin and reduced our dutiable value on the goods purchased. The result was a consolidated drayage process, reduced expenses, and a more secure supply chain.

By experimenting with Radio Frequency Identification (RFID) and Global Positioning Systems (GPS), we learned that our cargo does not always take the route we anticipated it would. As a result, we worked closely with our carriers to correct certain anomalies and we were able to take several days out of the supply chain in certain lanes. For a major retail importer, with an average of US\$60,000 of inventory in every container, this translates into greater cash flow, reduced interest expense and quicker inventory turn.

By hardening our supply chain and increasing its velocity, we were also able to reduce pilferage and better protect the corporate brand image that the company had spent millions of dollars creating. This was also appealing to the insurance companies and in some instances, lower incidences of theft resulted in reduced cargo insurance premiums.

We also involved our Business Continuity department to help us augment our resiliency and help us think about and plan for potential supply chain disruptions. We used the US west coast labour disruption of a few years ago as a mock exercise for what would happen in the event of the port closure as a result of a terrorist incident.

We developed training programs, not only for internal partners but for the vendors and suppliers as well. Capitalising on this opportunity to communicate with our vendors, we also discussed and reinforced other customs compliance objectives during this training and used the forum to introduce new programs like the change to the terms of sale.

Conclusions

The US CBP C-TPAT program celebrated its fifth anniversary in April of 2007. It is a mature program and other customs administrations around the world endeavouring to construct a supply chain security program would be well served to heed some of the lessons learned by their US counterparts.

Likewise, companies engaged in foreign commerce who are just beginning to deal with new security programs would be well served to be innovative when designing their program. The key is to develop a paradigm of partnership and transparency. A good supply chain security program should retain the flexibility to achieve the goal of a more secure system of global trade...not simply become another 'paper tiger'.

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