

CBP 2009 Trade Symposium Question Card Answers:

1. For goods inspected at one of the CSI locations, will it be processed as a low risk entry? Do you have any stats as to how the CSI program has expedited entry?

CSI selects shipments for inspection at the overseas ports based on high risk criteria for national security and terrorist threats. Those shipments are normally not re-examined upon arrival for interests of national security or terrorist threats unless new information is obtained after the shipment has been laden on the vessel bound for the U.S. Shipments may be re-examined for CBP trade related concerns or Other Government Agency concerns.

CSI does not keep statistics on expedited entry.

2. Will and how will the current truck staging area situation be addressed at the Laredo/ Nuevo Laredo crossing?

The Port has advised that at present, there have been no problems reported by the trade with staging at the World Trade Bridge. Trucks have long queuing lanes before primary. Mexico has a very large export lot for additional northbound queuing. There is staging space within the WTB cargo compound. Trucks stage in specific areas and around the cargo administrative building and there is no congestion between primary and exit gates. In addition, there are NO problems with the southbound staging of trucks. No problems are anticipated with the construction of the seven additional lanes. Trucks will still be able to queue in front of the primary lanes without issues and the current staging inside the compound will not change.

LFO - World Trade Bridge (Update)
January 19, 2010

- ❖ The World Trade Bridge (WTB) Inspection Facility is the busiest and largest import commercial facility on the southern border.
- ❖ This federal inspection facility processes over one million commercial conveyances each year.
- ❖ WTB has eight primary inspection lanes. One lane is equipped with a portal Vehicle and Cargo Inspection System (VACIS) dedicated to process empty trucks arriving from Mexico.
- ❖ The remaining primary inspection lanes are used for the processing of loaded trailers; this includes a Free and Secure Trade (FAST) dedicated lane.

- ❖ The current construction will expand the primary inspection lanes to fifteen inspection lanes with one wide load lane.
- ❖ As part of the construction project, the current portal (VACIS) will be relocated and an additional portal VACIS will be installed to facilitate empty trucks in an effort to reduce congestion within the WTB compound.
- ❖ In addition, this project will add two lanes to the secondary inspection area and one new lane for the exit control booth.
- ❖ This project is sponsored by the City of Laredo (lessor) with the assistance of Customs and Border Protection (CBP), General Services Administration (GSA) and the Texas Department of Transportation.

The ground breaking ceremony was held on January 12, 2010.

3. Are there stats available that you can share that illustrate the effectiveness of scanning and inspection resources deployed on the border? What threats have you been able to stop, prevent entry into the homeland?

Any statistics are used in furtherance of CBPs tiered approach to securing the border as well as ensuring resources are properly deployed. As such this information and any information regarding specific threats either prevented or other are not available.

4. How do the ports work together to standardize operational processes? Example – port memos from different ports outlined different processes on how each port handles temporary imports and has controlled goods imported on ITAR exemptions?

CBP Headquarters' (HQ) role is to provide national policy and guidance to the ports. Each CBP port is responsible for implementing local procedures that are in compliance with national policy and to request further guidance from HQ on policy and guidance issues, if needed.

CBP HQ can provide the ports with procedural guidance for incidents where it believes that national policy is not being implemented uniformly. In the event that CBP HQ believes that national policy is not being properly applied at particular port(s), it is CBP HQ's responsibility to obtain an understanding of the port(s) procedures and then work with the affected port(s) to ensure the policy has been implemented appropriately.

In instances where there is no national policy nor operational procedures to address an issue, CBP HQ is responsible for developing national policy to address

local considerations and ensure that the new policy is consistent with other national policies and practices.

5. Jim mentioned a reduction in CES exams due to improved facilities at the POEs. What percentage decrease in CES exams is the trade seeing as a result?

The impact of facility improvements on CES examinations has not been quantified.

6. What are the benefits of the carrier to FAST certify?

Among the key benefits of FAST enrollments are:

- Access to dedicated lanes for greater speed and efficiency in the processing of trans-border shipments;
- Reduced number of inspections resulting in reduced delays at the border Priority (front of the line) processing for CBP inspections; and
- Enhanced supply chain security while protecting the economic prosperity of the U.S., Canada and Mexico.

Another benefit for FAST drivers is that the FAST ID card is also proposed as an alternative document to the passport under new travel document requirements for U.S. and Canadian citizens for land and sea travel within the Western Hemisphere.

7. Customs still struggles with uniformity across ports. Guidelines provided to field offices should be made available to the trade particularly as it relates to 28, 29 issuance supporting documents for FTA/ ASP inexperienced staff at customs and lack of knowledge regarding what it means for an importer to be ISA. Also need visibility to 28 between ports getting three requests for the same SKU or a part number is a waste of time for customs and the importer.

The guidance provided to the field for issuing CBP Forms 28 and 29 is provided to the field by the Office of International Trade. Guidance has been issued for use regarding the Compliance Measurement program as well as a variety of trade enforcement programs. Guidance distributed to the field in support of a trade enforcement operation would not be routinely made available to the public.

CBP is currently upgrading the training for Free Trade Agreement (FTA) verifications. This training should be helpful to port personnel when processing verifications which include some instruction on what are the right documents to request.

The Entry Summary Accounts and Revenue (ESAR): Anti-Dumping Countervailing Duty (AD/CVD) drop A2.3.1a is scheduled to deploy in early

2010. This drop will create a national view of all CBP 28s issued through the Automated Commercial Environment (ACE) and provide guidance to the field offices on collaborative efforts in order to eliminate duplicative and excessive requests.

8. Do you have an update on a timeline for preferred manifest (border shipments)?

Can the questioner define what he/she means by 'preferred manifest'?

9. Recently a FRN was published, requesting that the tax ID for the importer be printed on the face of the actual check. Does that apply to any check submitted to CBP, including payments associated with prior disclosures?

All checks presented to CBP must have the TIN (Taxpayer Identifying Number) of the person making the payment. This would include prior disclosures.

10. When or will CBP create an ACE 350 message that they can send to the carriers notifying them their ACE declaration has met the FAST criteria. This will be an important feature to improve the use of the FAST lanes for carriers who are presently using the ACE declaration lanes because we cannot properly identify the importer of record on the cargo and will not use the lanes since we don't want to put our operators using FAST cards at risk.

There are currently no plans to notify manifest filers that a standard manifest meets FAST-PAPS standards for FAST lane processing.

11. CBP recently withdrew the use of WP (Air ITs) via the ABI system. What is the status on this when can ABI filers start to file WPs?

ABI Applications QP/WP (In-Bond processing) is currently in ACS production. The Air In-Bond functional equivalent (QX/WX) was deployed but deactivated due to some programming issues. The fixes are currently being tested and this functionality should be deployed later this year. A Cargo Security Messaging System (CSMS) message will be issued when the functionality is deployed.

12. Will FP&F system be brought into ACE? If so, when/ what are plans to modernize that group within CBP?

There are no plans to bring Fines, Penalties and Forfeiture (FP&F) processing into ACE at this time.

13. Will ACE be fully functional before end of current contract? For example entry edits, full release/ entry process, IGA release functions.

All Automated Commercial Environment (ACE) scope, as originally envisioned, cannot be completed with the funding available. CBP has analyzed and prioritized remaining functionality based on what is most vital to fulfilling the agency's facilitation and security missions. For FY10 and FY11, CBP will focus on the delivery of Rail and Sea Manifest (M1) and will begin development of select Entry Summary (A2.3), Air Manifest (M2.1), and Cargo Release (M2.3) capabilities. In coming years, individual business cases and funding requests will be developed for remaining ACE capabilities.

14. There is a troubling trend in IT in the recent years. ISF does not have a test system and CBP has been making changes for ACE and ISF that are not downward compatible making it very difficult for software providers. Will this be the trend in the future or will CBP spend more effort making test systems available?

There is a test system for Importer Security Filing (ISF) and there will continue to be one as processing in the Automated Commercial System (ACS) migrates to ACE. Currently, whether transmitting to ACS via the Automated Broker Interface (ABI) or the Automated Manifest System (AMS), ISF trade software can be tested in the certification environment (ProdCert). When ISF filing is implemented in ACE, ISF test filing will also be permissible in the ACE certification region. CBP always provides advance notice of programming changes and backward compatibility is afforded whenever possible. Historically, minor changes are implemented in the production and certification regions simultaneously. There are no plans to change that practice.

15. There was initial concern that CBP systems would not be able to handle 10+2 processing volume. Was the recent interruption in service due to volume and should the trade expect more outages?

We are committed to achieving a high level of ACE system availability to support users' needs. To support that goal, we measure and monitor ACE system availability. In recent months, the ACE system has been available 99.9% or more of the time, with the exception of planned maintenance windows. While there are always many threats to system availability, we hope to continue to improve ACE system performance.

16. Having been in business for over 20 years, I know that back in the 80s when we first started talking about a paperless environment no one believed that we would see it in our lifetimes. While it is not completely paperless yet, we are a lot closer than we thought we would be. I am a constant user of the ACE portal and would like to know when we will be able to depend on the reference information in there with regard to the currency exchange rates, etc...? Will that eventually become the official record for exchange rates?

As we have previously indicated when responding to questions regarding the reliability of reference information, ACE is not the system of record for reference data such as currency, tariff, etc. Such data is provided as a courtesy to the Trade, whose responsibility it is to provide correct data.

17. With known reporting issues within ACE, such as reconciliation flagging reporting problems, the import community quite frankly has trust issues with the data integrity within ACE. What is the agency doing to address some of these task-specific yet critical data reporting deficiencies?

As we have previously indicated, we are working multiple system changes which address improving data reporting quality.

18. Is there any way the decision that AMS data is available to the public under FOIA can be reversed? We have many clients who are outraged to find their private data on the internet.

RR: The release of AMS data to the public is mandated by 19 U.S.C. 1431 (c) and implemented by 19 CFR 103.31 et seq.; while the information may also be available under the FOIA, the requirement to release, publicly, AMS data is the result of a law passed by Congress. A statutory amendment by Congress would be required to reverse this mandate. Both the statute and the regulation at 103.31 (d), however, provide a means for importers and consignees to request confidentiality with regard to the release of the name and address of the importer (notify party), consignee, and shipper. Importers and consignees or their agents (e.g., brokers) may request confidential treatment.

19. What is CBP's strategy as for administering customs broker exams?

It is administered bi-annually. When the written Customs broker examination is prepared, it is the goal of CBP to prepare a balanced and fair examination; wherein, the examination candidates' knowledge of U.S. import and export regulations and statutes, CBP procedures, and international trade is tested. If, after the examination, it is discovered that an ambiguous question was crafted and/or a conflicting examination reference existed on the examination, the candidate may appeal his results.

20. How is President Obama's recent announcement on Federal Agency data transparency initiative going to affect confidential importer data held by CBP?

RR: It will not affect CBP's treatment of importer data protected by FOIA Exemption 4. Basically, under President Obama's Memorandum and the Attorney General's Guidelines they want agencies to consider whether there is "foreseeable harm" from release even though an exemption may apply and make discretionary releases where possible. However, DOJ OIP has issued guidance

which states that discretionary disclosures are not possible where information is required to be withheld by some other legal authority. The Trade Secrets Act is a legal authority that requires information to be withheld from the general public. Furthermore, the guidance specifically mentions “commercial and financial data.” So, although there is a commitment to transparency, the administration recognizes that the FOIA contains exemptions to protect confidential commercial information.

21. When will CBP be able to tell the filer which entries are not filed timely?

Filers must exercise reasonable care as required by the Mod Act which includes timely filing of the entry summary. CBP notification for untimely entries is in the form of liquidation damage case notification.

22. If you support an account management system as a way to move forward – why did CBP refuse to consider some option of account management for the ISF for known client – such as trusted shippers, CTPAT members?

Data transmission requirements are universal, and in the interest of uniformity they must be. Therefore, all carriers, and importers are subject to the same ISF requirements, regardless of whether they are trusted partners such as C-TPAT members. However, because CBP now receives more detailed data sooner, we are able to more quickly and accurately identify trusted partners, which will speed cargo release. CBP also allows Tier 3 C-TPAT members the opportunity to register and receive ISF progress reports directly from CBP. Additionally, certification as a Tier 2 or Tier 3 member of C-TPAT is a mitigating factor that CBP will take into account when assessing liquidated damages or penalties for failure to comply with ISF requirements. In this way CBP has taken an account based approach to implementation of ISF.

23. If you say that account management is the way to go, what specifically is CBP doing to move forward with that concept say for entry summary? ACE will stop short of fully implementing certain parts of entry and we have statement processing for duty. What can you commit to for consolidating entry summaries?

ACE will allow information to be shared by all the ports for entry findings and allow account based processing of importers instead of each port working independently. The second question needs to be refined.

24. You’ve each talked a lot about managing on an “account basis”, how does the world look different if or when we get there?

Managing by account seeks to aggregate risk management and leveraged end-to-end visibility of trade entities. This approach strengthens security, facilitates low-risk trade, ensures swift and consistent enforcement action, and increases overall efficiency of CBP’s processes. The goals are to effectively monitor and manage

risk; raise and maintain compliance; strengthen enforcement actions through an aggregate approach; increase efficiencies and reduce redundancies; and accurately identify CBP trusted partners by linking security and trade programs through risk management and field activity.

25. When will AD/CVD entries be accepted as remote location filing eligible rather than requiring outport broker?

Remote Location Filing for AD/CVD entries is contingent upon EDI imaging capability in ACE. Currently, where entered merchandise falls within the scope of an antidumping and/or countervailing duty order, the broker is precluded from using Remote Location Filing. The possibility of allowing this in ACE could be evaluated in the future.

26. We/ Trade are now seeing the need to supply CBP with data elements to sustain national security, however; the data is trade secret. How can we be certain its safe and will not be used to penalize with over reaching enforcement?

The Interim Final Rule issued on the Importer Security Filing (ISF), stated that the information was to be collected for the express purposes of ensuring cargo security and counterterrorism. The Rule went on to note that use of the data for trade enforcement purposes was precluded.

27. If you take an importer who is both ISA and C-TPAT – Trusted Trader. Adapt current FTZ weekly filing approach (which works) to a monthly statement. Merge with PMS payment. This is not an impossible concept. Requires trust.

The feasibility of this could be explored in the future.

28. Descriptions – on invoices ISA members – having demonstrated controls for classification should have an exception to invoice description. If customs needs to verify HTS it could be handled with a 28 or AII reject requests without compromising our compliance rating.

Invoice data must be adequate to allow for the examination of the merchandise, determination of duties, and for verifying the information required for statistical purposes.

29. Averages and shortages – often quantities, values and duties are negligible. Reconciliation is not an option as it is transactional. How about ISA members allowed to conduct as part our annual assessment reporting under the IOR #.

Post-entry amendments would allow correction prior to liquidation. Being a member of ISA does not allow waiving of legal requirements.

30. Considering the global economy do you foresee the ISA program becoming available to importers who have proven their dedication to compliance even though they may not be C-TPAT members as the ISA program is more economical for both the importer and CBP?

At this time C-TPAT is the only prerequisite for becoming ISA.

31. Create FAQ or list of ways IPR holders or importers can assist CBP in targeting for IPR violations. For instance, three scenarios call for different responses
- a. IPR Holder imports their own product
 - b. Importer imports goods registered for IPR protection
 - c. IPR holder purchases their own protected goods manufactured by and imported by a 3rd party.

Rights holders and other members of the trade community can assist CBP in targeting for IPR violations by providing information through CBP's online eAllegations system. This system allows external parties to provide CBP with information regarding suspected non-compliance and possible infringement of intellectual property rights. The system is open to everyone and is not limited to individuals or companies that have recorded trademarks or copyrights with CBP.

32. Could someone please comment on CBP's enforcement of ITC section 337 decisions, specifically, how effective such enforcement is and possible changes or improvements moving forward?

CBP recognizes its obligation under section 337 of the Tariff Act of 1930 to enforce exclusion orders issued by the U.S. International Trade Commission (ITC) by refusing entry to articles determined to fall within an order's scope. Since the overwhelming majority of investigations under section 337 are patent-based, CBP attorneys, in determining admissibility, review the investigation history, interpret patent claims, and meet as appropriate with the parties who appeared before the ITC. They are supported in this regard by scientists from CBP laboratories who subject articles that are potentially within the scope of an order – particularly those involving advanced technologies – to testing and analysis. Other personnel who are integral to the enforcement of exclusion orders include the international trade specialists who target shipments that are possibly within the scope of the order and the CBP Officers and import specialists at the ports of entry who are responsible for the day-to-day monitoring of entries and examination of goods.

CBP is committed to enforcing ITC exclusion orders. The ITC's Office of Unfair Import Investigations conducts a survey approximately every five years on the enforcement of exclusion orders. The current survey suggests that the majority of parties that obtain exclusion orders are satisfied with the resulting level of enforcement. A new survey is forthcoming and is expected to align with past outcomes. For its part, CBP is continually exploring ways to improve its IPR

border enforcement processes, including exclusion order enforcement and welcomes input in this regard from all relevant stakeholders.

33. How can C-TPAT work within this IPR requirement, specifically with establishing “secure” and “IPR protected” during the targeting process?

CBP has just begun consideration of using supply and distribution chain management processes and methodologies for IPR enforcement purposes. While C-TPAT was developed as a cargo security and anti-terrorism program, and its requirements do not include certification of compliance with IPR laws, as CBP seeks input from the trade community in exploring possible implementation of supply and distribution chain management programs for IPR, the relationship of these programs to C-TPAT will be considered.

34. Have you considered having round-table meetings with the stakeholders? This will allow CBP and other agencies to develop cohesive best practices.

Yes. For example, we had a CBP and Pipeline Operations Stakeholder’s meeting last year and will have another such meeting this year.

Regarding IPR enforcement by account through supply and distribution chain management programs, CBP agrees that roundtable meetings would benefit trade stakeholders, CBP and other government agencies.

CBP is exploring concepts such as supply and distribution chain management in conjunction with an examination of its overall IPR enforcement processes and procedures. We expect this to be a multiyear effort that will include significant stakeholder input, and the concepts proposed were offered to stimulate thinking and discussion. CBP recognizes that successful implementation of programs along the lines of these concepts requires input from all parts of the trade community.

35. A problem for importers of goods who are not rights holders and do not buy from rights holders (so called parallel or grey market imports) is convincing port personnel that goods are not counterfeit. Rights holders have no interest in facilitating this trade. Does CBP have advice for these legitimate importers and are port personnel trained to recognize these goods as legal?

CBP’s determination of whether the placement of a mark on imported merchandise has been authorized by the trademark owner is fact specific and is undertaken on a case-by-case basis based on the available evidence. To assist CBP with making that determination, importers should be prepared to submit all relevant documentary evidence to support a claim that the placement of a mark on the merchandise was authorized by the trademark owner.

36. If electronic chips exempt authorized distributors from inspection and treats all unauthorized distributors as high risk how will CBP avoid wasting its time inspecting every legitimate parallel market importation?

CBP seeks to reduce the significant resources allocated to inspecting legitimate goods, including parallel market goods. The electronic “chips” concept would benefit both the importer and CBP if the authentication technology validated the goods throughout the chain from the manufacturer to the importer. This would enable the importer to document that the goods are legitimate in advance of importation, and to present that validation, via the electronic “chip” to CBP upon entry of the goods.

Another way to achieve that goal is for CBP to provide importers of parallel market goods (and other importers) with the option of enrolling in an Importer Self Assessment (ISA) IPR program. An ISA-IPR program would be for importers who have a system of business records that demonstrate the accuracy of CBP transactions and have established internal control procedures over areas considered at risk by CBP. Importers that are approved for ISA-IPR would receive certain benefits including reduced inspections. An importer must be C-TPAT certified to be eligible for enrollment in ISA.

37. For the fourth year in a row “shoes” were the #1 item seized by CBP and ICE. How would you explain this success in IPR enforcement for this commodity and what advice do you have for brand owners of other commodities that are seeking similar results?

A significant factor in CBP’s success in finding counterfeit shipments of many commodities is the willingness of rights holders in the affected product sectors to be very proactive in providing product identification training to frontline CBP officers to assist CBP in identifying suspect shipments. In addition to providing useful technical knowledge to the officer, the product ID training has the added benefit of raising the officers’ awareness of the product and the counterfeiting issues associated with it.

CBP advocates that brand owners be proactive in brand protection activities. The first step rights holders can take in helping CBP to enforce their intellectual property rights is recording their trademarks and copyrights with CBP. This is a relatively simple process that can be done online. Next steps would include producing product ID materials and providing them, as well as training, to frontline CBP officers at the ports of entry.

38. Why not introduce importer’s declarations and manufacturer’s affidavits to IPR in the regs similar to 9801’s?

While there likely would be some proponents of this idea, the trade community in general has previously indicated a lack of support for this type of requirement for

IPR. CBP agrees. Declarations or affidavits would burden legitimate importers with providing additional documentation, and expose them to potential penalties for violations of 19 USC 1592 for errors or non-compliance. CBP verification of compliance with such a requirement at entry (IPR compliance is an admissibility issue) would delay the release of cargo while doing little to improve the efficiency of the IPR enforcement process.

39. Can you elaborate on what initiatives you have had with other foreign countries customs agencies? How is information shared and do you formulate best practices for global trade compliance that will be published to help importers?

In addition to programs such as the Container Security Initiative (CSI), the Secure Freight Initiative (SFI) and the Immigration Advisory Program (IAP), CBP engages both bilaterally and multilaterally through organizations like the World Customs Organization (WCO), Asia Pacific Economic Cooperation (APEC), the Group of 8 (G8), and the Regional Conference of Customs Directors General (RCCDG) etc. on issues such as

- Supply Chain Security
- Trade recovery
- Mutual Recognition Arrangements (MRA)
- Customs Mutual Assistance Agreements (CMAA)
- Authorized Economic Operator (AEO) program development
- Data harmonization.

The work on these issues that CBP does with the various international organizations to develop global best practices and standards are published by those organizations (e.g. WCO, APEC) and are publicly available. Links to the WCO website can also be found at the CBP website (http://www.cbp.gov/xp/cgov/border_security/international_operations/international_agreements/wco/)