

C-TPAT – Should You Take The Plunge?



- Deciding Whether Your Company Should Enroll in The Customs-Trade Partnership Against Terrorism (C-TPAT)
- Steps To Take Before Enrolling
- Making The Application Process Painless
- Pitfalls To Avoid
- Making Your Company Audit-Proof

**Gonzalez Rolon Valdespino & Rodriguez,
LLC Attorneys**

Telephone: (214) 720-7720

Fax: (214) 720-6076

info@exportimportlaw.com

www.exportimportlaw.com

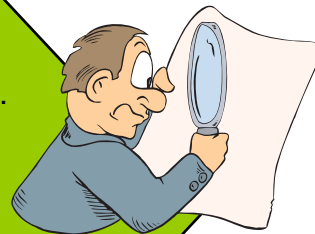
Dallas • San Antonio • Mexico City

©GRVR, LLC, Attorneys (2003)

Should I Enroll in C-TPAT?

Reader Advisory

This is our law firm's take on the Customs-Trade Partnership Against (C-TPAT). It's just that, our take. The U.S. Bureau of Customs and Border Protection (CBP), the agency that devised and enforces C-TPAT, would probably not endorse some our interpretations and suggestions. But we're attorneys, and we're wired a little differently (insert here your favorite lawyer joke). Consider this guide as our free public service offering to the trade community. Don't view it as legal advice. We only provide legal advice to existing clients (whose ranks we would gladly see you join). Let us know if you're interested.

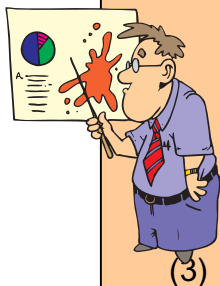


What is C-TPAT, Anyway?

C-TPAT is the latest brainchild from CBP. The agency acted quickly after 9/11 to protect our nation's borders from terrorist threats. It devised a security program for all companies along the supply chain to adopt. At the beginning, the program was offered just to manufacturers, importers, and a few others. It's been broadened considerably recently. Mexican companies and a few other foreign suppliers can now apply. CBP promises to expand the program even further.

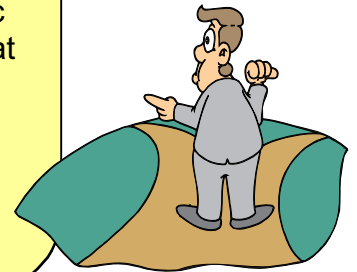
There are four steps to C-TPAT:

- (1) **Agreement To Voluntarily Participate** - a company signs and submits a C-TPAT Agreement to Voluntarily Participate. The Agreement is found on CBP's website. You download or copy it, have someone in authority sign and date it, then file it.
- (2) **Security Profile** -at the same time or within sixty days, the company submits a Security Profile. The Security Profile is based on an internal review the Company undertakes pursuant to the official C-TPAT Security Guidelines and Recommendations. The Company not only reviews its internal security, but also the security of everyone else (carriers, brokers, foreign suppliers) along the supply chain. The Company looks for security gaps and takes or promises to take corrective action. This may include replacing foreign suppliers and agents who do not conform to the Company's security guidelines.
- (3) **Certification** - CBP informs the Company (the agency is supposed to do this within sixty days of the filing of the Security Profile, but CBP may not meet this deadline) that it is certified or that the Company first must take further steps.
- (4) **Validation** - CBP audits the certified Company to make sure that everything in the Security Profile is accurate and that the Company adhered to its obligations under the Agreement to Voluntarily Participate.



Where Do I Find Information on C-TPAT?

CBP's website (<http://www.cbp.gov/>) is the main place to find official information on C-TPAT, although CBP's held a couple of C-TPAT training seminars to educate the public. C-TPAT isn't codified in regulations or statute. There was no notice issued in the Federal Register and the public wasn't allowed an opportunity to comment, although the agency claims that it consulted with a few huge US companies before launching the program. Of course, we think you'll find more helpful and complete information on our law firm's website (WWW.EXPORTIMPORTLAW.COM).



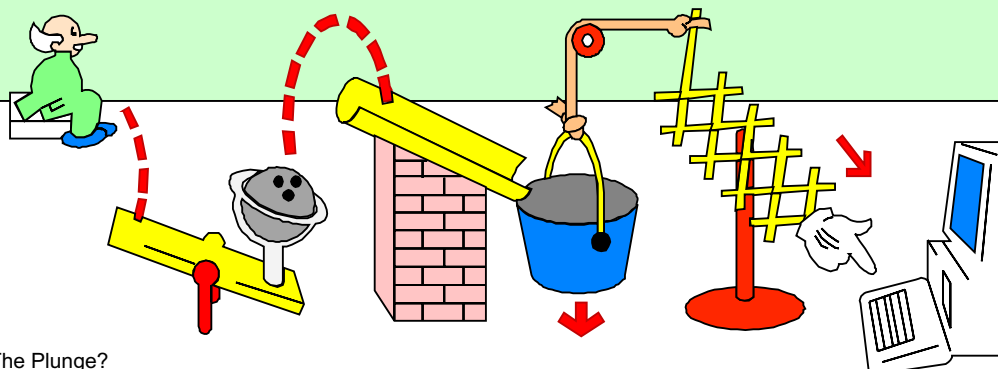
Are The C-TPAT Guidelines Easy To Understand And Follow?

The best you can say about them is that the Guidelines are short and can be easily found on CBP's website. On the other hand, they are imprecise, to say the least. For example, how is a Company supposed to describe its "quality controls on production processes to ensure system integrity?" CBP provides no information on what the heck this means. Moreover, CBP doesn't tell you which, if any, of its Security Recommendations to adopt. Instead it has a disclaimer so big you could drive an oil tanker through it: "The following are general recommendations that should be followed on a case-by-case basis depending on the company's size and structure and may not be applicable to all."

There are also other uncertainties. For example:

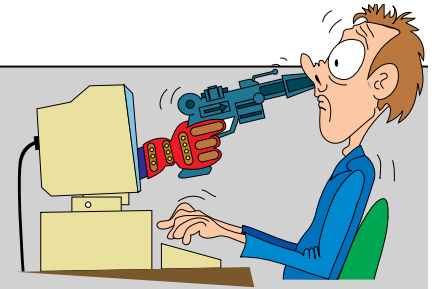
- Should a Company file a Security Profile? An Executive Summary of its Security Profile? A Security Profile Questionnaire?
- Must the Company actually visit service providers and foreign suppliers to confirm their security representations or can the Company just take them at their word?

The wonderful thing about imprecise rules is that they give you, as the applicant, a great deal of wiggle room. The danger is that they give enforcement officials just as much discretion. See A Customs Attorney - Don't Leave Home Without One, below.



Is C-TPAT Voluntary?

CBP sure claims that C-TPAT is voluntary. But C-TPAT is voluntary like breathing and eating are voluntary. You don't have to really do these things (last time we checked, there is no law making eating and breathing mandatory), but your life is apt to be more pleasant and longer if you jump right in and join the crowd.



So why does CBP claim C-TPAT is voluntary? Maybe the agency was just trying to get around having to publish regulations and provide all the public notice and comment requirements. Maybe CBP is making C-TPAT voluntary now because it can't handle the rush of applications, but will make it mandatory later when it beefs up its enforcement staff. Or maybe the CBP really does believe that the C-TPAT is somehow voluntary. If you've ever dealt with the agency, you realize they tend to view things a bit differently from the rest of us on the outside. Who know what CBP is thinking? All that is for sure is that you're asking for a snoot full of problems if you don't sign up. It's getting harder for a company to exist and thrive without participating in C-TPAT. If you don't believe us, read on. Useful information follows, as well as some really cute graphics.

Is C-TPAT Really A Partnership Between CBP and The Trade Industry?

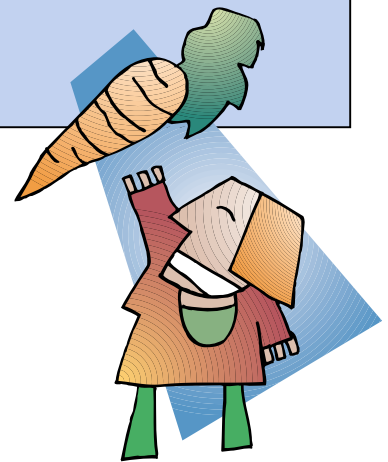
Did CBP ask you or your company before launching C-TPAT? (Don't you hate people who answer a question with a question?) If you're like a vast majority of the trade community, nobody consulted your company before C-TPAT was launched. Except for a few limited venues, no one is asking your opinion now about how C-TPAT is shaping up. C-TPAT is basically a one-way street with all the authority residing in the Government and all the obligations being imposed on the trade community. In CBP's defense, the agency probably realizes that C-TPAT can't really work unless companies chip in, hence the partnership. This is particularly true because the C-TPAT offices are severely understaffed at the moment (but only at the moment – a deficiency that your company should not bank on). In addition, companies have much more expertise than CBP about the type of security that works in their particular company or industry. It is also important for the Government to work with private companies and individuals toward the common goal of preventing terrorism. Let's not forget that we are all on the same ship in that sense and there is no doubt that CBP, like everyone reading this guide, wants a safer future for all of us. But it's hard to be a "partner" with a federal enforcement agency that regulates your industry and your company. Your roles are not interchangeable and power is skewed terribly in the Government's favor. It's like being a partner with the police officer that is pointing a radar gun at you when you whiz down the highway. Sure, you share the common goal of preventing crime, but only one party can write a ticket while the other party (i.e., you) gets to pay the fine and gets hit with higher insurance premiums. It's sort of the same thing with C-TPAT.

So, What's The Benefits, Bub?

If you hadn't noticed, CBP has been busy dreaming up all sorts of programs, whether FAST, Importer Self-Assessment Program, and Advanced Cargo and Electronic Filing. More are on their way. Promise. All these initiatives are pegged in some way to C-TPAT. If you're not C-TPAT certified, you can't participate. It's impractical to conduct customs business without C-TPAT. Soon it may be impossible.

CBP claims that it will provide feedback and technical assistance when practical to C-TPAT participants. It also claims that your cargo, if not breezing through clearance, will at least not be targeted for additional inspections and scrutiny.

You may be one of these diehards who don't believe that C-TPAT has made much of a difference to date on cargo clearance and release. Or you may think that C-TPAT is just one of the agency's latest toothless programs that it launches with much fanfare, but soon fades away from disuse or inattention. **Reality Check:** None of the other programs were initiated by 9/11. Do you think that the federal government will, can, or should de-emphasize cargo and supply chain security any time soon? If the reconstituted, beefed-up agency in charge of your shipments tells you to take C-TPAT seriously, we suggest that you perk up and listen attentively.



What If I Don't Enroll in C-TPAT?

CBP promises to hammer your company if you don't enroll in C-TPAT. Among other things, CBP promises that:



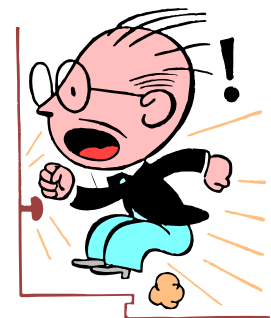
You'll Be A Target – Notoriety and fame are great ... when they help your business. But being singled out by law enforcement officials is something your company probably wants to avoid. Not that your company is doing anything wrong, but why invite risk and scrutiny when you don't have to? And if you are doing something wrong, not being C-TPAT certified is a wonderful way of being discovered by the CBP. The CBP promises that your shipments will be scrutinized more closely if you are not C-TPAT certified. What if the agency finds problems, beyond security, with your shipments? You think you run a tight ship, but every company makes unintentional errors regardless of its due diligence. In the hands of a dogged and creative enforcement official, small violations can quickly blossom into huge investigations and humbling fines and penalties. If you aren't C-TPAT certified, you are in essence saying, "hey, I'm not doing everything I need as a responsible company to safeguard our borders." If you were a diligent and responsible CBP official, could you resist investigating such a blatant red flag?

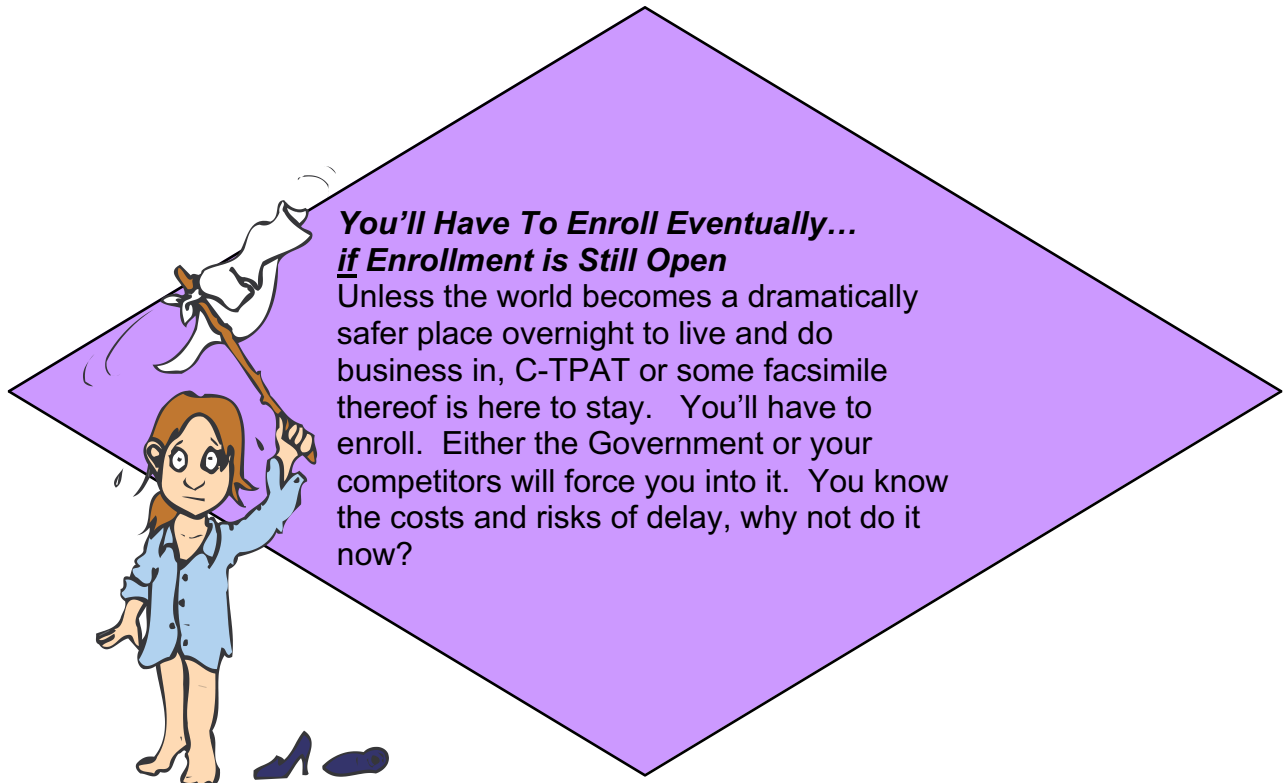
Delayed Shipments - Your cargo will take a lot longer to clear Customs. If you rely on "just in time" inventory, you must just want to change it to "just bide your time." It's difficult to quantify the delays, but CBP has been spending months beefing up and training its new C-TPAT security teams. Waiting until your cargo slows down to sloth speed before getting applying is probably not a wise mood. By then, you'll be on CBP's radar screen and it'll take you months and months, maybe longer, to get the needed certification.



CBP Is Threatening To Close C-TPAT-

If you're waiting for an opportune time to enroll, you may not want to wait too long. CBP is threatening that at some threshold point, maybe soon, it won't admit any more companies into C-TPAT. The agency may be bluffing just to get companies to enroll, but we can't advise anyone to take the chance. If the program shuts its doors to new entrants, do you want to be inside or outside?





**You'll Have To Enroll Eventually...
if Enrollment is Still Open**

Unless the world becomes a dramatically safer place overnight to live and do business in, C-TPAT or some facsimile thereof is here to stay. You'll have to enroll. Either the Government or your competitors will force you into it. You know the costs and risks of delay, why not do it now?

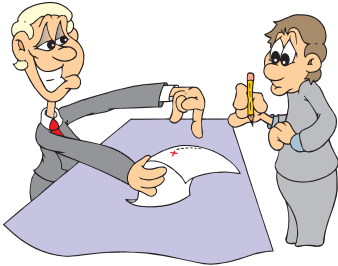
The Good News - The good news is that getting C-TPAT certified doesn't have to be a nightmare. This assumes, of course, that your company isn't a complete compliance basket case, which it probably isn't since you're taking the time to read up on C-TPAT. This also assumes that you are going to be honest and truthful with your security profile.

The key is security. C-TPAT is in the main a security program. You may not know it, but your company probably already adopted many of the security precautions that CBP suggests. You had to. What company, for example, would ever move into a building that wasn't *"constructed of materials, which resist unlawful entry and protect against outside intrusion."* Duh. Similarly, you probably do an adequate job screening your employees and protecting against theft. These are the kind of procedures that should be highlighted in your C-TPAT Security Profile.



Making Your Company Audit-Proof

Getting C-TPAT certified can and should be relatively simple. Getting C-TPAT certified while planning for the eventual validation (it's an audit, folks, CBP just doesn't want to scare you), that's the tricky part

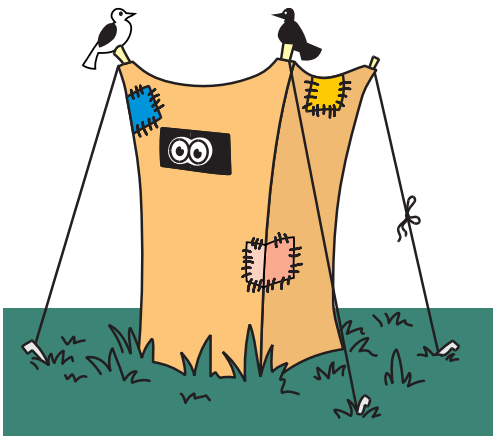


Understand What You're Signing Up For

The C-TPAT Agreement to Voluntarily Participate pretty much puts all the obligations on you and very few on the CBP. By signing and submitting the Agreement, you are making a representation to a federal enforcement agency. While you have no recourse if CBP doesn't follow its few obligations, what happens if you don't hold up your end? Before you sign, make sure you will be able to comply with all your obligations under the Agreement.

Have an Outside Attorney Direct Your Internal Review

For a million reasons spelled out in greater detail below, you need an experienced Customs attorney directing your internal review. You're bound to make and write imprudent or confidential statements and find unflattering facts. Your best friend at such times is the attorney-client privilege. See, *A Good Customs Attorney - Don't Leave Home Without One*, below.



Get Your Security House In Order

You probably don't want to apply for C-TPAT and then find out that you can't get ship-shape within the sixty days (thirty more if you need an extension) you need to file your Security Profile. You're going to have to do an internal review anyway, so why not try to first find your company's most glaring security needs? After you have a C-TPAT team and a good sense of what you need to do, then file your Agreement to Voluntarily Participate.

Find A Good Document Fisher

To prepare your C-TPAT Security Profile, you need someone within your Company that is (1) good at compiling current and complete information about your company's security program and the security of other parties along the supply chain, (2) can convince upper management to make needed improvements, and (3) can work with outside legal counsel.



Report and Correct Your Security Flaws

Companies face a terrible temptation to not report the gaps and problems in their supply chain. "Do we really have to dump a favorite supplier if it refuses to cooperate with our security requirements." "Do we really need to show that almost anyone can walk in to our loading dock?" "Do we really need to purchase surveillance cameras." Like CBP admits, very little under C-TPAT is required. **BUT THIS DOESN'T MEAN YOU CAN OR SHOULD HIDE SECURITY RISKS.**

A good Customs attorney can help you devise procedures and policies that work both for your company and CBP.

Let the World Know

Once you're C-TPAT certified, let the world know. This is especially effective if you're competitors aren't C-TPAT certified. Who wants to deal with a company that doesn't take the time and effort to accommodate the minimalist security requirements under C-TPAT. ("What's wrong, bub, don't you want to prevent terrorism?") Who wants to contract with a non-C-TPAT company when, by doing so, you automatically become part of



A Good Customs Attorney - Don't Leave Home Without One

You can't beat a good Customs lawyer for helping you get C-TPAT certified. You may be considering keeping the C-TPAT application process completely in-house or that a consultant might do as good a job and charge lower fees. **DON'T DO IT.** At least, don't do it without having a good customs attorney guide the process. Why not? It's a bit like having a root canal. You may be able to pull it off (literally) just by your lonesome or with the help of an old buddy, but avoid all the pain and messy cleanup. Hire a professional.

There's also the attorney-client privilege. With Enron, Arthur Andersen, and the rest of the corporate scandals that have rocked corporate American in the past few years, the attorney-client privilege has taken a beating. But it is still with us. There is no better way to protect your communications from unwanted disclosure to third parties and to the Government than through the attorney-client privilege. No other professional can get you the privilege. An attorney working for a consulting or accounting firm can't do it (though they have been trying desperately for years to get it), and perhaps not even an in-house attorney. And in the course of your company's internal review, you will find out information and documents that you will prefer to keep confidential. You will find incriminating information even if you are the most scrupulous company in the world. There is no need to hang your dirty laundry out in public if you can avoid it.

There's another reason to hire an attorney. We attorneys think and work differently from other professionals. Maybe that's why so many people love us. We are trained advocates, zealous defenders of our clients. We are, in sum, pains in the rear for anyone trying to mess with our clients. If we do our jobs correctly, we ferret out facts and advance honest defenses that benefit those whom we represent. Most enforcement officials would rather that you not hire an attorney. Ever wonder why? We defend against overreaching by the Government. As we said above, C-TPAT gives a lot of discretion to CBP. Who will defend against the Government's overreaching?



**Gonzalez Rolon Valdespino & Rodriguez,
LLC Attorneys**

Telephone: (214) 720-7720

Fax: (214) 720-6076

info@exportimportlaw.com

www.exportimportlaw.com

Dallas • San Antonio • Mexico City

©GRVR, LLC, Attorneys (2003)