

## What companies are saying about supply chains, trade compliance and organizational processes

A survey by Centrx, BDP International and Saint Joseph's University.

### Research Objectives

Supply chains have undergone many changes as companies have realized they are key to survival in an ever-evolving global economy. Organizations and their processes have had to adapt to remain competitive in this environment.

To better understand these issues Centrx conducted a study to:

- Evaluate common challenges to global supply chains
- Identify strategies companies are using to meet these challenges
- Determine how supply chain decisions are currently being made

### Methodology

The study utilized an online survey which was distributed to a select list of individuals. The list comprised clients and other contacts with global supply chain responsibilities across a variety of industries. A total of 220 individuals received invitations to take the survey, with a total response rate of 35%.

Respondents came from a number of industries, including chemicals, consumer goods, industrial and retail. Two-thirds of the participants' companies are

headquartered in North America, 20% in Europe and the rest in Asia and the Middle East. Almost half of the companies represented had annual revenues in excess of US\$10 billion, and an additional 20% had revenues of greater than \$2.5 billion.

### Highlights

Globalization of supply chains and attendant increases in supply and delivery points have inevitably resulted in longer lead times. This, combined with continued pressure to reduce costs, calls for greater supply chain visibility and better understanding of the regulatory climate in other countries. To date, companies have been responding to these challenges by increasing inventories, utilizing more technology and outsourcing and intensifying their focus on regulatory compliance.

The survey found that companies that have applied high levels of technology to the customer order process have seen a decrease in their lead times, enabling them to speed deliveries to their customers.

A particularly interesting finding of the survey is that many companies consider their supply chains to be global, when in fact the decision-making is done on a regional basis. The reasons for this vary, with some companies indicating they were forced to a regional approach by new source points, while others cite faster decision-making for better control over service and costs.

The continued evolution of supply chains to accommodate the demands of global trade can provide the impetus to find ways to operate and manage them as global entities as opposed to often loosely-integrated regional or local chains.

*For a full copy of the report, please contact Yone Dewberry, Centrx, at [ydewberry@centrx.net](mailto:ydewberry@centrx.net). Centrx is a BDP Knowledge Venture<sup>SM</sup>*



## GREENING THE SUPPLY CHAIN

A quarter of a century ago 172 participating governments met in Rio de Janeiro. The occasion: the United Nations Conference on Environment and Development, aka The Earth Summit. It was unprecedented for a UN conference, in terms of both the size and the scope of its concerns. The goal was to help governments rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet, and come together to make the difficult decisions to help ensure a healthy planet for future generations.

It led to the adoption of Agenda 21, a wide-ranging blueprint for action to achieve sustainable development worldwide. The Summit's message was simple: nothing less than a transformation of our attitudes and behavior would bring about the necessary changes. Governments at that time recognized the need to redirect international and national plans and policies to ensure that all economic decisions fully took into account any environmental impact.

### Supply Chain Environmental Management

The message began to produce some early results, making eco-efficiency a guiding principle for business and governments alike. The term "green procurement" has been around for some time. In fact, US-based Hewlett Packard was one of the early leaders to "go green." HP took the paradigm of corporate environmental responsibility beyond just complying with environmental regulations and instead implemented a series of proactive initiatives, shared by a few other world-class companies.

"Corporate initiatives, like Hewlett Packard's, are now beginning to become more mainstream," says Michael Ford, Vice President of Regulatory Compliance and *(continued on page 4)*

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# ▶ WILL US SHIPPERS GET RAILROADED?

Thanks to the increase in global sourcing, transportation capacity constraints are not uncommon in a number of countries, especially at seaports in Europe and the US. For some time, eyes have been trained on the ports and railroads of the United States, where capacity, costs, congestion, as well as service in general, are still valid concerns. Add to that a heavy dose of increased security issues and you have a volatile mix.

The 2007 outlook for logistics rates in the US just got a little more complicated. While US shippers have begun to see increased capacity and price cuts in the trucking industry, it's not going to be a buyer's market in all modes.

Although ports have received most of the attention, (not long ago the US Chamber of Commerce stated that the major container ports will at least double, if not triple their freight volumes twelve years from now), it is the railroads that are again in the spotlight.

In the days of steam locomotives, when engineers wanted to increase speed, they would "open up the throttle." If the rail lines in the US have their way, 2007 is going to signify a jolt of another kind. Many master carriers in the US have had rail contracts in effect for between five and ten years with no rate adjustments. A large number of those contracts are set to expire in 2007-2008. In fact, drop an "e" and freight rates could quickly become fright rates.

"It is a dilemma because many carriers do not know what to charge yet," says Tom Keene, Vice President for BDP Transport. According to Keene, the rail rate increase being tossed around for 2007 could be as much as 30 percent.

What's behind such a big increase? Now that railroads have made long overdue major investments in infrastructure to enhance intermodal traffic in the US—port facilities, on-dock rail, etc.—they hope to recoup some of those costs. Keene points out that intermodal traffic has reportedly grown in excess of 20-30 percent of rail revenues. "We believe that

domestic US rail costs will be the most critical increase facing shippers and NVOs in 2007-2008," he says. In fact, it was one of the key issues at the Trans-Pacific Maritime Conference held in Los Angeles in March.

All this is occurring while rail traffic in the US has had a number of "soft" months—rail freight volume was down 4.5 percent through mid-April this year compared with the same period last year, which is reportedly the steepest decline for that period in 11 years.

It's no secret that getting goods to US ports is going to continue to be a major challenge for shippers. "Everyone is very concerned about the ongoing rail problems," adds Keene. It is easy to see why domestic inland transportation can exacerbate problems at the ports. While rail is just one stage in the supply chain, for most shippers, we are talking about a global transport network. And you are only as fast as the slowest point in that network.

"For truck and rail rates, BDP is looking to the master carriers and our own contracts to guide us,"

**"Companies are looking at all methods to avoid congestion on the US West coast."**  
*Tom Keene, Vice President - BDP Transport*

Keene says. "You can project what you believe is the percentage increase for 2007-2008; however, since the rails have not finalized their agreements with the master carriers, no one knows what that number is going to be."

Keene believes there will be no US government intervention in supporting infrastructure improvements and capacity increases. As a result, many companies are now looking at alternative gateways besides the West coast to move their cargo, thus avoiding or at least minimizing the impact of the increases.

"Companies are looking at all methods to avoid congestion on the US West coast," Keene points out. "You see capacity increases on all-water service to the East coast and in the Gulf, as well as reverse IPI (inland point interchange), where we bring cargo into the East coast and truck or rail it to the Midwest. While it is perhaps a little longer transit time, if the cost savings are there, shippers are going to look at which gateway or mode is going to provide the best benefits for their transportation needs. Plus, an ILWU contract comes up for renegotiation in 2008."

## Meanwhile, at sea

**Asia-Europe.** At this time, it is not a shipper's environment in this lane. Port-to-port rates have taken some big hits, including one in January and the forecast for 2007 is another \$400 per FEU GRI, in April, which is pretty staggering. Currently, demand exceeds the capacity and ships are at one hundred percent lifting and load factor.

In **North America**, importers are looking at the old transloading theory: take advantage of a stable or low port-to-port rate on the ocean leg and unload the container at the port and move it inland in a transload arrangement in your own trucks. "Instead of using the door rate on the ocean move," Keene says. "All options are going to be reviewed, so that importers can minimize any impact on their unit costing for 2007."

**Trans-Pacific:** Thanks to bunker fuel and the inland delivery costs in the US, carriers' Trans-Pacific annual contracts (TSA and non-TSA) are expected to see a decrease or, at most, a very modest rate increase, when many of them are reviewed in May. "This is also driven by carriers substantially reducing their capacity and the softening of spot rates in the important Hong Kong-Los Angeles trade lane," adds Keene. "All this comes at a time when the US economy has slowed down, further adding to a number of 'What's really going to happen?' scenarios." ☺

## ▶ GLOBAL VS. US GROWTH

The international Monetary fund (IMF) announced recently that the world economy will grow at an incredible 4.9% in 2007 and equally fast next year. That will mean the global economy has expanded at a rate of 4% or more for six straight years, which has not been achieved in the 37 years the IMF has been keeping such records.

However, the US economy is losing strength and will grow at just 2.2% in 2007, down from last year's 3.3% and equal to the EU and Japan. A concern because the US accounts for roughly 25% of the global economic engine. ☹



# INFORMATION—NOT PAPER

## The benefits of document archiving and retrieval

It's 10:00 AM. You just received an urgent call from a client asking for data and documents related to a shipment that occurred two years ago. It is critical they receive the information before the end of their work day. Problem is, you are in Chicago and they are in Antwerp. You have a narrow window within which to respond. Their day is ending and yours is about to get a lot more complicated.

The information they want is in a file somewhere. A paper file. You think you know where, but you're not certain. Worse: you believe it may be in Jack's office in one of ten file cabinets. Problem number two: Jack is on vacation. And someone has taken your panic button.

That someone is Lynda, who just learned that a compliance audit is about to descend on her department. Worse: many of her records boxes were not labeled properly so she has to pull twice as many boxes from the local warehouse as she should.

Paper. It's all around us and most companies are still sagging under the weight of thousands of files each containing dozens of pieces of paper. The cost to businesses is staggering: not only in-house and outside storage expenses, but also incredible inefficiencies by employees who spend far too much time searching, sorting, creating and recreating documents. Not to mention emergencies where inability to access data can significantly impact your internal processes or client relationships.

### Taking the pain out of documentation management

While the true paperless office continues to be an elusive goal, such inefficiencies can be significantly reduced and even eliminated through a document management program.

Breaking the paper habit is serious business at BDP. In fact, electronic data management is one of the company's primary initiatives. BDP's Documentation Management Solutions (DMS) is the company's program to take paper and folders out of the process and create an environment for long-term electronic storage of documents, while providing quick and easy access to those documents.

Jim Brown, Six Sigma Black Belt, who heads up BDP's paperless project initiative, says, "The objective is to store data in a secure, electronic environment, which is easily and quickly accessible on demand and that meets all business, legal and customer requirements.

### A plus for BDP clients

Taking out the paper will definitely benefit BDP customers, says Brown. He sees DMS as another opportunity for BDP to provide another business enhancement capability for each customer that wants to participate in the program. Those include reduction in human error when managing paper, rapid and secure global access to archived files, and improved document life cycle management, and reliable document disaster recovery.

Electronic document management through BDP as the records manager would mean that customers would not need to keep some of the paper-based records they have today.

BDP's Documentation Management Solutions answers the following questions:

- Would you like to eliminate lost/missing files?
- Would it be great if you could maintain your records electronically instead of in storage in paper form in a box in a warehouse?
- Would global visibility and sharing of transactions and records in a secure environment be helpful?

- What if you could access your documents at the touch of a button instead of having to call the warehouse, ship the box, then have someone go through the box to find your documents?
- Would you like greater efficiency by having your documents created in a CD or DVD format?
- Instead of standing at a copy machine and copying documents, wouldn't it be better if those documents could be accessed via the Internet?
- Do you want back-up files and records for disaster recovery?
- And what about fast retrieval of files for audit and investigation purposes?

"BDP's Documentation Management Solutions is a service clients can choose to select or not," points out Andrew Piazza, BDP Director of Business Development. "However, by selecting DMS, the client will probably save money. This feature is currently being added to our menu of offerings for clients to consider.

"We are always looking to introduce value-added solutions to build on our core services. If we can automate a process, we should make that recommendation to the client. It is our obligation to do that. In fact, many customers have already expressed an interest in document management and BDP is in an excellent position to provide that through our DMS capabilities on a global basis." 🌐



## DID YOU KNOW?

The data that companies must deal with seem to have taken on a life of their own. And the larger the company, the bigger the headache. *InformationWeek* reports that the amount of digital information created, captured and replicated worldwide in 2006 was equal to 161 billion Gbytes. That is roughly equivalent to the contents of 12 stacks of books extending from the Earth to the sun. That number is expected to grow to 988 Gbytes by 2010.

Further, *InformationWeek* states that, "The threat is the glut of data will overwhelm an organization's ability to manage information, much less make use of it." 🌐



# GREENING THE SUPPLY CHAIN

(continued from page 1)

Quality. "Today, tough EU standards have also pushed the envelope for greener measures, creating a ripple effect that is being felt around the world."

## Hand-in-hand: a real chain reaction

Many companies now understand that the environmental soundness of their products and services is linked to the environmental soundness of raw materials sourced from suppliers and business

"Companies have been incorporating procurement into their environmental improvement programs, primarily focusing on buying products using 'green' criteria..."

*Michael Ford, Vice President of Regulatory Compliance and Quality*

partners, says the PBSP-Center for Corporate Citizenship. The result is that those companies are looking for opportunities to influence their suppliers'—both large and small—social and environmental performance.

UK's Business Eco agrees. The company works with a number of major organizations to assist them to both develop a strategy to green their supply chain and to help their suppliers through environmental improvement programs. For them, greening the supply chain has extended the traditional definition of

green procurement by broadening it to include not just the purchase of products, but also activities and services. This extends to the procurement of suppliers, contractors and subcontractors operating on behalf of a supply chain leader. "Greening the supply chain is an action carried out by a supply chain leader to ensure that suppliers have a certain level of environmental awareness within their organizations," Business Eco says. "Originally an environmental policy was enough; now supply chain leaders are asking for much more."

In the USA, the Design for the Environment (DfE) program is one of the government EPA's premier partnership programs and works with individual industry sectors in the US. As DfE sees it, manufacturers of complex products, such as automobiles, aircraft, ships, and appliances, depend on a broad network of suppliers for parts and assemblies. Many of the suppliers in these supply chains (or tiers) are small- and medium-size companies. By applying various approaches to manufacturing and purchasing decisions throughout a network of suppliers, the DfE Program promotes pollution prevention and the reduction of exposures and risks in these facilities.

## Good business sense

In fact, according to Business Eco, "The competition for large contracts, gaining a competitive edge in the market, attracting investment and keeping shareholders and other interested parties

satisfied are just some of the key drivers forcing large companies to take their environmental impacts seriously. Terms such as sustainability and corporate social responsibility are forcing organisations to demonstrate to shareholders, investors and competitors that they are working within the strictest environmental constraints."

BDP's Ford adds, "Since the emergence of environmental management systems, companies have been incorporating procurement into their environmental improvement programs, primarily focusing on buying products using 'green' criteria such as is the product produced locally, how much waste is generated and whether it is recyclable. Nowadays, in the shipping world, improved packaging standards and reusable packaging are often the norm."

When it asked "Why Green Your Supply Chain?" the Pacific Northwest Pollution Prevention Resource Center (PPRC) found a ready answer from General Motors. "Working together with our suppliers, we can accomplish much more to improve the environment than GM can alone," the car manufacturer says. PPRC says, "Greening the supply chain refers to buyer companies requiring a certain level of environmental responsibility in core business practices of their suppliers and vendors. Many businesses have internal standards, policies, and/or environmental management systems that govern their own environmental performance and efficiency. If suppliers do not abide by these same standards, the buyer company may be buying and using products that do not meet their own standards."

"A supply chain can be complex, with environmental issues occurring at the second and

## It's a fact

For the first time in human history, the world's population is about to become mostly urban, according to *The Christian Science Monitor*. Citing population growth rates and migration patterns, United Nations researchers and other experts predict that some time in 2008 more people will live in cities than in rural areas. This demographic shift is mostly taking place in Africa and Asia, largely in low-income settlements in developing countries—much of it in the 22 "megacities" whose populations will exceed 10 million and in some cases grow to more than 20 million by 2015.

By 2015, there are likely to be 59 African cities with populations between 1 million and 5 million, 65 such cities in Latin America and the Caribbean, and 253 in Asia.

Cities also exemplify the challenges and promises of sustainability. China, for example, has 16 of the world's most polluted cities. But on an island in the Yangtze River near Shanghai, China this year plans to break ground on the Dongtan ecocity project designed to be nearly self-sufficient in food, water, energy, and waste disposal for its projected 500,000 residents. ♻️

third-tier supplier levels. Some companies may also attempt to work the opposite spectrum of the supply chain, by educating their customers on the environmental benefits of their products.”

PPRC adds that, according to a study conducted by Business for Social Responsibility (BSR), many companies have received requests from their corporate customers to address environmental issues. The study discusses some benefits and challenges from the suppliers’ perspective. Several suppliers noted that their efforts toward meeting the customers’ requirements have resulted in advantages

“Greening the supply chain is an action carried out by a supply chain leader to ensure that suppliers have a certain level of environmental awareness within their organizations.”

*Business Eco - UK*

such as cost reductions, greater operational efficiency, enhanced value to customers, increased sales, positive media attention, and positive ratings from socially responsible investment groups.

To PPRC, partnering with suppliers and contractors can provide the following benefits:

- Supplier knows the product better than the buyer and can maximize efficiencies and minimize associated wastes
- Two or more perspectives (or different expertise areas) are better than one when it comes to designing greener products and processes
- Working together strengthens the customer-supplier relationship
- Shared savings and mutual benefits make such efforts even more worthwhile.

## GREEN TECH

Greening the environment isn’t all about global warming, spewing smokestacks, gas-guzzling vehicles and other visible forms of pollution. In fact, there are a number of technology initiatives that companies are beginning to implement, according to a recent report in **CIO** magazine.

### Power-conscious chips

These use a new insulating material that consumes less electricity, generates less heat and delivers faster processor speeds. One company is developing 64-bit, dual-core power efficient processors, which it claims will be three or four times more energy efficient than other products.

### Energy-efficient servers

Thermal engineering had limited server design—until now. Manufacturers are redefining their systems to be more power efficient with the intriguing result of reducing power usage by 50 percent while significantly increasing performance.

One company that purchased more energy-efficient servers has reduced its energy usage by 75 percent with a saving of nearly half a million dollars. It also estimates it will reduce output of carbon dioxide emissions by several hundred tons this year alone, the equivalent of taking 100 cars off the road for an entire year.

### Better cooling and power supplies

Power supply vendors are specifically developing products that target global warming. These include systems that use carbon dioxide for cooling, instead of more harmful refrigerants, and direct-current power supplies that are more efficient than converting alternating current from an electrical grid.

### Green design

Server manufacturers and IT service providers are developing ideas for more efficient data center designs that deliver energy, space and performance efficiencies. In addition, Green Grid, a nonprofit IT user group, is focusing on best practices for managing data center power and cooling issues. ☺

**ConocoPhillips became the first big US oil company to call on the government to set targets to reduce greenhouse gases when it joined the United States Climate Action Partnership, a business forum pressing for such legislation.**

“We recognize that human activity, including the burning of fossil fuels, is contributing to increased concentrations of greenhouse gases in the atmosphere that can lead to adverse changes in global climate,” said Jim Mulva, chairman and chief executive officer. “While we believe no one entity can alone address the environmental, economic and technological issues inherent in any solution, ConocoPhillips will show leadership in finding pragmatic and sustainable solutions.

The company has begun addressing the environmental, technological and economic impact of greenhouse gases and other emissions in its own operations. For example, ConocoPhillips is building the potential long-term cost of carbon into its capital spending plans for each of its major projects around the world and improving energy efficiency in its facilities, including a 10 percent improvement in energy efficiency at its US refineries by 2012. In addition, the company is developing internal targets for greenhouse gas emissions from its operations.

## China to take on global warming

China said it will participate in talks on a future framework to fight global warming, reports *The Wall Street Journal*. This could lead to a more effective system to limit greenhouse gases and could put further pressure on the US to adopt a mandatory limit on its global-warming emissions. Since China became an economic powerhouse, its carbon dioxide emissions increased and were recorded at 18% of global emissions in 2004—a figure second only to the US, which produced 21%. Some believe China will move ahead of the US in such dubious rankings by 2010.

Over the last year there has been an increasing awareness of the rising costs of pollution and the dangers of global warming, including food security and flooding in cities such as Shanghai and Shenzhen.

## What role does your provider play in a cargo claim?

By Allan Kline, BDP Risk Manager - Transportation

Recently, I was working on a difficult cargo claim and could not decide what role BDP actually played in the transaction, and therefore what our liability really was. So I looked at some of the possible roles BDP could play in a transaction or series of transactions.

First I defined the most frequent roles BDP could play: forwarder, transportation broker, NVOCC, surface freight forwarder, surface freight broker, Customshouse broker and my very favorite, transportation intermediary. I decided to look at the most common roles of freight forwarder and NVOCC.

It turns out that "freight forwarder" can be defined in various ways depending on the mode of transportation. For example there is a difference between an ocean freight forwarder and a surface freight forwarder. To further muddy the waters, some "forwarders" can and do play different roles, acting as a freight forwarder in one transaction, and a surface forwarder in another, and an NVOCC in yet another transaction. What is more, we can play more than one role in a single transaction. Confused?

Plus, what happens outside of the USA? Are the roles we play the same on a global basis? In a recent article by Steve W. Block, an attorney with Betts, Patterson and Mines, P.S., Mr. Block cites the recent Supreme Court Decision in *Norfolk Southern v. Kirby*, where the High Court refers to an Australian company as a "freight forwarder" when the company clearly fits the US Law's definition of an NVOCC. Under Australian law, the company was indeed a freight forwarder.

The fact is that the role that the intermediary plays in the transaction will determine how the intermediary is treated by the law. Again, to quote Mr. Block's article, "If a company calls itself a 'freight forwarder' to a surface shipper and its activities support that nomination, then it can find itself stuck holding the bag for a damaged freight claim, even if they meant to say it was a 'broker.'"

Step back and look at the roles again. The roles of ocean freight forwarder and surface transportation broker are roughly the same, at least on the operational level. Freight forwarders and surface transportation brokers do not issue bills of lading, and generally act like a "travel agent" for cargo. Therefore, unless an error is made in the

performance of that role, the forwarder would not have liability for loss or damage claims.

On the other end of the scale are the NVOCC and the surface freight forwarder—if operating in these roles the entities do issue bills of lading and will have "carrier liability" for cargo entrusted to their care, custody and control.

And what exactly is a transportation intermediary? BDP is. We are a 3PL/third party logistics provider: a company that provides outsourced or "third party" logistics services to companies for part or sometimes all of their supply chain management function. Third party logistics providers typically specialize in integrated warehousing and transportation services that can be scaled and customized to a customer's needs based on market conditions and the demands and delivery service requirements for their products and materials.

So what does all of this mean? BDP operates in all of these areas and more. We must be aware of and understand each role we play, and to be sure that our customers know what role they are asking us to perform. "Freight forwarder" has become a general everyday term in the lexicon of the transportation industry. Our liability in any transaction depends on the role that we play.

For more information on any Risk Management topic, please contact Allan Kline at [akline@bdpnet.com](mailto:akline@bdpnet.com). ☎

## ▶ REACH update

*Includes excerpts from The Journal of Commerce*

The new European regulations known as REACH—Registration, Evaluation and Authorization, and Restriction of Chemicals—are on the near horizon.

As many as 30,000 chemical substances are covered by REACH, which will be phased in starting this June. Rosemary Gallant, deputy senior commercial officer at the US Mission to the EU, called REACH "the world's most ambitious law on public health and environmental protection and one of the most complex texts in the history of the EU." The new regulations comprise some 1,000 pages of legal text and technical annexes, including some that have yet to be finalized.

Gallant, who spoke at REACH information seminars hosted by BDP, indicated that the rules of

REACH are based on the substance used in each product, not its end use. An ordinary garment exported to Europe would not be subject to REACH, but garments treated with pesticides for use while hiking in the woods would be covered. So would mattresses made with polyurethane, an environmentally risky chemical.

Products already registered under other European regulations, such as foods, pharmaceuticals, biocides and pesticides, will not need to be registered again through REACH. Also exempt are low-risk substances such as water and oxygen; minerals, ores or concentrates; and polymers.

"If you don't register your chemicals, they cannot be exported to Europe," Gallant said. Substances

categorized by the REACH rules as of "very high concern" will need to meet even more stringent requirements, beyond registration with the European Chemicals Agency. These substances will need official authorization from the ECA or they will be banned outright from entering the EU.

Registration is the responsibility of the EU importer, as well as Europe-based downstream users and third-party representatives. Manufacturers and their importers in Europe can benefit from an extended deadline if they pre-register their substances with the European Chemicals Agency in Helsinki, Finland, by Nov. 30, 2008.

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# REGULATORY WATCH

PERIODIC UPDATES ON US CUSTOMS POLICIES AND OTHER REGULATORY ISSUES

## ▶ THE PRIOR DISCLOSURE

A Prior Disclosure (PD) is often a key component of an effective compliance program. The PD program provides reduced penalties to parties who advise Customs and Border Protection (CBP) of non-compliance with importing laws/regulations before CBP notifies the party of the possible non-compliance. (Prior to opening a formal investigation, CBP will notify parties of an investigation.) Although the associated penalty can be significantly reduced, any duty amounts due, plus interest, must be paid.

Importers considering using the PD program should be aware that there are specific filing rules and language, and that there are no shortcuts to the process. Following the rules will ensure that the Prior Disclosure is valid. A valid PD describes the circumstances of an alleged violation of CBP's laws and regulations. CBP has the authority to assess monetary penalties against any party who makes a material false statement, act, or omission in connection with their importations.

What constitutes a "material" false statement is broad. Any document, statement, act, or omission is material if it significantly impairs CBP's ability to collect and report accurate trade statistics, deceives the public as to the source, origin or quality of the merchandise, or constitutes an unfair trade practice. So, even if there is no loss of revenue for CBP, if the false statement, act, or omission affects trade statistics, the alleged violation is considered material and CBP has the right to assess penalties.

### How can this happen?

Material false statements are a result of negligence, gross negligence, or fraudulent behavior. This can include, but is not limited to, under or over valuation (i.e., incorrect reporting of non-dutiable charges, assists, or buying commissions), improper country of origin reporting and/or marking, making an incorrect or false claim under a free or reduced duty provision (i.e., GSP, NAFTA, or American Goods Returned), or evasion of anti-dumping or countervailing duty.

Also, a simple failure to exercise Reasonable Care is cause for penalty under negligence standards. The amount of the penalty assessed by CBP is commensurate with the level of negligence alleged.

### Do not rush: conduct a comprehensive investigation when filing

It is common that upon discovery of the issue, the discloser requires additional time to gather all information on the affected transactions. You may commence the prior disclosure, while requesting 30 days to obtain all necessary documentation. Extensions beyond the initial 30 days can be requested.

### Give it some thought....

CBP actively promotes submission of PDs, but remember the process is voluntary. On one hand, submission prior to, or without knowledge of, a

formal CBP investigation can guarantee reduced penalties, saving significant dollars. On the other hand, CBP may never uncover the alleged violation on its own. Additionally, a PD can invite additional scrutiny on the part of CBP. If CBP were to allege fraud, your records for the past five years can come under review. As mentioned above, when filing a PD, you are required to submit a check for any duty loss and interest for all entries liquidated up to the date of submission of the PD. A careful cost-benefit analysis is warranted.

When considering filing a PD, it is in your best interest to obtain the counsel of a law firm specializing in Customs law, even though you may have in-house legal representation. Such expertise is needed to fully comprehend all liabilities associated with a PD filing, as well as to provide direction on other areas within your organization that may come under additional review by CBP. ☺

*Should you require additional detailed information on the filing of a Prior Disclosure, you can obtain a copy of CBP's Informed Compliance Publication, ABC's of Prior Disclosure from [www.cbp.gov](http://www.cbp.gov). The current version is dated April 2004. Or call BDP's Corporate Regulatory Compliance Department: Adrienne Graddy (847) 350-2156 or Melissa Pinheiro (215) 269-8225.*

## BDP ACC/CDI PASSES AUDIT FOR RESPONSIBLE CARE MANAGEMENT SYSTEM

BDP recently took part in a successful audit of management practices set forth by the American Chemistry Council/Chemical Distribution Institute. The audit comprised the codes for CDI (EU) as well as the ACC (USA) requirements that have been adopted for managing international shipments by a third party logistics company.

General areas covered:

- Role of senior management commitment
- Ability to document accidents/incidents
- Ability to educate staff on HazMat regulations and security
- Ability to audit business processes for errors (non-compliance)
- Ability to assess risks for security concerns and make decisions to minimize risk

BDP will continue to apply lessons learned from this audit to all areas of our global operations. ☺

**REACH Timeline**

**June 1, 2007** - REACH enters into force in all 27 Member States.

**By June 2008** - Committees attended by representatives from EU member states and chaired by the EU Commission (a procedure called "comitology") will make important decisions on the criteria for establishing threshold concentrations for substances of very high concern and revising the list of substances exempted from the scope of the legislation.

**By December 2008** (again in comitology committees) review of:

- The criteria for identifying substances that are Persistent, Bioaccumulative and Toxic (PBT) or that are Very Persistent.
- Very Bioaccumulative (vPvB). Criteria defining what constitutes adequate justification for avoiding to perform certain safety tests.

**By December 2010** – Deadline for registration of chemicals of very high concern and substances produced/imported in high volumes (above 1,000 tons per year).

**2013** - General review under EU co-decision – whether to require the substitution of substances that interfere with the hormone system (endocrine disruptors).

**June 2013** – Deadline for registration of chemicals produced/imported in quantities between 100 and 1,000 tons per year.

**2014** - General review under EU co-decision – whether a Chemicals Safety Report (CSR) should be submitted for substances between 1-10 tons.

**June 2018** – registration of low volume chemicals between 1- 100 tons per year.

**2019** - General review under EU co-decision to decide whether or not to entitle consumers to information about further substances present in articles including e.g. allergens. Currently the duty to inform consumers upon request about substances in articles is limited to those which may cause cancer, alter genes or are toxic to reproduction.

The EU comitology committees will review the tests for reproductive toxicity. ☺

**HazMat UPDATE**  
**Latest IMDG code available**

The 33<sup>rd</sup> amendment of the IMDG code is now available. However, please do not discard the current IMDG, just yet. Through the end of this year, the 32<sup>nd</sup> amendment is the mandatory issue. The 33<sup>rd</sup> amendment is optional for use this year, and will become mandatory on January 1, 2008.

Most users will start migrating to the new amendment later this year, and may or may not be aware of some of the changes in the code. The recommendation is to continue to use the 32<sup>nd</sup> amendment—together with the 33<sup>rd</sup> if necessary—until the end of the year.

Note the following change in the *Basic Description*:

<u>Old</u>	<u>New</u>
Proper Shipping Name	Identification Number
Hazard Class	Proper Shipping Name
Identification Number	Hazard Class
Packing Group	Packing Group

US-DOT: The New Basic Description is optional, and does not become mandatory until January 1, 2011

ICAO/IATA: The New Basic Description MUST be used

IMDG: The New Basic Description is optional and does not become mandatory until January 1, 2008

For further information, please contact *Torsten (Tom) Helk* of BDP's Regulatory Compliance Department at (215) 629-8263, or [helkt@bdpnet.com](mailto:helkt@bdpnet.com).

**ENFORCING  
COPYRIGHT LAWS**

In April, the USA filed two separate complaints against China at the World Trade Organization, one on enforcing copyright laws, the other on opening markets to American media. The decision to ratchet up the pressure on trade came days after America imposed tariffs on certain types of Chinese paper and when American politicians are agitating for action against what they see as Chinese protectionism. China said the most recent action would "seriously undermine...co-operative relations" on trade. ☹

**Gateway**

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